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INDEX-DIGEST

JANUARY - DECEMBER 1971

This index-digest covers all the published and all the important unpublished decisions and opinions of the Department of the Interior for the period from January 1 through December 30, 1971, rendered in the Office of Hearings and Appeals, Ballston Building No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203 and in the Office of the Solicitor, Interior Building, Washington, D. C. 20240.

Decisions and opinions cited as appearing in 78 I.D. are published and copies may be obtained by subscription from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C. 20402. Other decisions and opinions are unpublished and copies may be obtained from the Office of Hearings and Appeals or the Office of the Solicitor as provided in 43 CFR Part 2.

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A	- Appeal from Bureau of Land Management and from Geological Survey
IBCA	- Interior Board of Contract Appeals
IBIA	- Interior Board of Indian Appeals
IBLA	- Interior Board of Land Appeals
IBMA	- Interior Board of Mine Appeals
M	- Solicitor's Opinion

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William Hall & Diana Hall v. Secretary of the Interior, Civil No. A-169-68, D. Alas. Dismissed, July 25, 1969; no appeal.

Lester J. Hamel, A-28830 (September 17, 1962)

Lester J. Hamel v. Neal D. Nelson et al., Civil No. 8565, N.D. Cal. Judgment for defendant, December 13, 1963 (opinion); judgment entered February 11, 1964; appeal docketed February 14, 1964; dismissed by plaintiff, March 20, 1964.

Raymond J. Hansen, et al., 67 I.D. 362 (1960)

Raymond J. Hansen, et al. v. Stewart L. Udall, Civil No. 3902-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Robert Schulein v. Stewart L. Udall, Civil No. 4131-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Raymond J. Hansen, A-30179 (March 5, 1965)

Mary L. Brandt and Natalie Z. Shell v. Stewart L. Udall, Civil No. 2659-ND, S.D. Cal. Dismissed, September 30, 1965; amended complaint filed November 15, 1965; judgment for defendant, June 7, 1966; dismissed for lack of jurisdiction, November 15, 1967; judgment for defendants, March 26, 1968; rev'd., 427 F. 2d 53 (9th Cir. 1970); no petition.

Mary L. Brandt & Natalie Z. Shell v. Stewart L. Udall, Civil No. 2715-ND, S.D. Cal. Dismissed, December 3, 1965.

Paul Harvey, et al., A-30552 (June 24, 1966)

Paul Harvey, Grace Ernest and Lalo Enriquez v. Stewart L. Udall, Civil No. 6753, D. N.M. Judgment for defendant, January 25, 1967; aff'd., 384 F. 2d 883 (10th Cir. 1967); no petition.

Kenneth Holt, an individual, etc., 68 I.D. 148 (1961)

Kenneth Holt, etc. v. U.S., Ct. Cl. No. 162-62. Stipulated judgment, July 2, 1965.

Hope Natural Gas Co., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; Per curiam decision, aff'd., April 28, 1966; no petition.

Boyd L. Hulse v. William H. Griggs, 67 I.D. 212 (1960)

William H. Griggs v. Michael T. Solan, Civil No. 3741, D. Idaho. Stipulation for dismissal filed May 15, 1962.

Stanley W. Hutchinson v. Clyde W. Bishop, A-29693 (May 4, 1964)

Clyde W. Bishop v. Stewart L. Udall, Civil No. 1-65-54, D. Idaho. Judgment for plaintiff, July 7, 1966; no appeal.

Idaho Desert Land Entries - Indian Hill Group, 72 I.D. 156 (1965)

Wallace Reed, et al. v. Dept. of the Interior, et al., Civil No. 1-65-86, D. Idaho. Order denying preliminary injunction, September 3, 1965; dismissed, November 10, 1965; judgment adverse to U.S., July 10, 1970; appeal docketed February 9, 1971.

Interpretation of the Submerged Lands Act, 71 I.D. 20 (1964)

Floyd A. Wallis v. Stewart L. Udall, Civil No. 3089-63. Dismissed with prejudice, March 27, 1968.

J. A. Jones Construction Co., et al., IBCA-233 (June 17, 1960)

Palisades Contractors, et al. v. U.S., Civil No. 2247, D. Idaho. Settled.

J. A. Terteling & Sons, 64 I.D. 466 (1957)

J. A. Terteling & Sons v. U.S., Ct. Cl. No. 114-59. Judgment for defendant, 390 F. 2d 926 (1968); remaining aspects compromised.

J. D. Armstrong Co., 63 I.D. 289 (1956)

J. D. Armstrong, Inc. v. U.S., Ct. Cl. No. 490-56. Plaintiff's motion to dismiss petition allowed, June 26, 1959.

Jensen-Rasmussen, et al., IBCA-363 (March 14, 1963)

Jensen-Rasmussen & Co. v. U.S., Civil No. 5963, W.D. Wash. Judgment for defendant, February 24, 1964; no appeal.

Dale Johnson, A-30806 (September 17, 1968)

Dale Johnson v. Stewart L. Udall, Secretary of the Interior, Civil No. A-135-68, D. Alas. Stipulated dismissal, April 10, 1969; no appeal.

Kenneth J. Kadow, et al., A-30053 (October 5, 1964)

Kenneth J. Kadow, et al. v. Stewart L. Udall, Secretary of the Interior, Civil No. A-1-65, D. Alas. Judgment for defendant, September 7, 1967; appeal docketed, October 6, 1967; dismissed for lack of prosecution, February 2, 1968; no petition.

R. A. Keans, A-30183 (February 16, 1965)

R. A. Keans v. Stewart L. Udall, et al., Civil No. 2648-ND, S.D. Cal. Defendant's motion to dismiss granted, November 22, 1965; no appeal.

Estate of Kee-ah-tha-com-oke-quah, IA-974, 975 (September 16, 1965)

D. O. (Bill) Couch v. Stewart L. Udall, Civil No. 66-282, W.D. Okla. Aff'd., 265 F. Supp. 848 (1967); aff'd., 404 F. 2d 97 (10th Cir. 1968); no petition.

John J. King, A-28543 (October 13, 1960)

John J. King v. Stewart L. Udall, Civil No. 68-61. Judgment for plaintiff, November 8, 1961; rev'd., 308 F. 2d 650 (1962); no petition.

John J. King, et al., Fairbanks 033268, 033279 (September 25, 1964)

John J. King, et al. v. Stewart L. Udall, Civil No. 2750-64. Judgment for plaintiffs, 266 F. Supp. 747 (1967); on May 4, 1967, a stipulation of voluntary dismissal with prejudice sgd. by the plaintiffs and all other parties.

John J. King, Dorothy W. King, Fairbanks 034577 (October 26, 1965)

John J. and Dorothy W. King v. Stewart L. Udall, Civil No. A-6-66, D. Alas. Dismissed with prejudice, April 24, 1968.

Barbara G. Kirk and Marjorie G. Wright
See Dean Kirk

Dean Kirk, A-29018a (April 26, 1963), Barbara G. Kirk and Marjorie G. Wright, A-30022 (August 20, 1963)

George M. Larsen, et al. v. Stewart L. Udall, Civil No. 1651, D. Nev. Stipulation covering seven land entries; four are dismissed as moot, three are dismissed with prejudice.

Anquita L. Kluenter, et al., A-30483, November 18, 1965
See Bobby Lee Moore, et al.

Leo J. Kottas, Earl Lutzenhiser, 73 I.D. 123 (1966)

Earl M. Lutzenhiser and Leo J. Kottas v. Stewart L. Udall, et al., Civil No. 1371, D. Mont. Judgment for defendant, June 7, 1968; aff'd., 432 F. 2d 328 (9th Cir. 1970); no petition.

Max L. Krueger, Vaughan B. Connelly, 65 I.D. 185 (1958)

Max Krueger v. Fred A. Seaton, Civil No. 3106-58. Complaint dismissed by plaintiff, June 22, 1959.

James M. Krumtum and Cale M. Shearer, A-30838 (December 21, 1967)

James M. Krumtum & Cale M. Shearer v. Udall, et al., Civil No. 6567, D. Ariz. Judgment for defendant, January 6, 1970; no appeal.

Richard M. Lade, As Attorney in Fact for Santa Fe Pacific R.R., A-29121 (January 10, 1963)

Richard M. Lade, Attorney in Fact for Santa Fe Pacific R.R. v. Udall, et al., Civil No. 67-14, D. Ore. Judgment for defendant, 295 F. Supp. 265 (1968); aff'd., 432 F. 2d 254 (9th Cir. 1970); no petition.

W. Dalton La Rue, Sr., 69 I.D. 120 (1962)

W. Dalton La Rue, Sr. v. Stewart L. Udall, Civil No. 2784-62. Judgment for defendant, March 6, 1963; aff'd., 324 F. 2d 428 (1963); cert. denied, 376 U.S. 907 (1964).

Langdon H. Larwill, et al., A-28697 (May 16, 1963)

Pacific Oil Co., a Corp. v. Stewart L. Udall, Civil No. 9406, D. Colo. Judgment for defendant, 273 F. Supp. 203 (1967); aff'd., 406 F. 2d 452 (10th Cir. 1969); cert. denied, 395 U.S. 978 (1969).

L. B. Samford, Inc., 74 I.D. 86 (1967)

L. B. Samford, Inc. v. U.S., Ct. Cl. No. 393-67. Dismissed, 410 F. 2d 782 (1969); no petition.

Charles Lewellen, 70 I.D. 475 (1963)

Bernard E. Darling v. Stewart L. Udall, Civil No. 474-64. Judgment for defendant, October 5, 1964; appeal voluntarily dismissed, March 26, 1965.

Perley M. Lewis and Mildred C. Lewis, A-28707 (December 30, 1963)

Perley M. Lewis, et ux. v. Stewart L. Udall, et al., Civil No. 5451 Phx., D. Ariz. Judgment for defendant, March 22, 1966; aff'd., 374 F. 2d 180 (9th Cir. 1967); no petition.

Perley M. Lewis, A-29572 (June 27, 1963)

Perley M. Lewis & Mildred C. Lewis v. Stewart L. Udall, Secretary of the Interior, Civil No. 5003 Phx., D. Ariz. Judgment for defendant, July 31, 1967; amended judgment for defendant, May 28, 1968; aff'd., 427 F. 2d 673 (9th Cir. 1970); cert. denied, 400 U.S. 992 (1970).

Milton H. Lichtenwalner, A-28909 et al. (June 15, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 2932-62. Judgment for defendant, July 15, 1963; no appeal.

Milton H. Lichtenwalner, et al., 69 I.D. 71 (1962)

Kenneth McGahan v. Stewart L. Udall, Civil No. A-21-63, D. Alas. Dismissed on merits, April 24, 1964; stipulated dismissal of appeal with prejudice, October 5, 1964.

Linn Land Co., A-28765 (July 12, 1962)

Linn Land Co., et al. v. Stewart L. Udall, Civil No. 63-264, D. Ore. Consolidated with Forsberg v. Udall, Schmand v. Udall & Property Management Co. v. Udall, Battle Mt. Co. v. Udall. Judgment for defendant, 255 F. Supp. 382 (1966), except per curiam dec. as to Battle Mountain which see. Stipulated dismissal on appeal, October 13, 1966.

Merwin E. Liss, et al., 70 I.D. 228 (1963)

Hope Natural Gas Co. v. Stewart L. Udall, Civil No. 2132-63.

Consolidated Gas Supply Corp. v. Stewart L. Udall, et al., Civil No. 2109-63. Judgment for defendant, September 20, 1965; per curiam dec., aff'd., April 28, 1966; no petition.

Leland M. Lucas, A-29228 (December 10, 1962)

Laland Murray Lucas v. Stewart L. Udall, et al., Civil No. 5007 Phx., D. Ariz. Stipulated dismissal, October 10, 1967.

Estate of Richard Lucero, IA-1435 (June 13, 1966)

Eunica Lucaro Vaila v. Stewart L. Udall, Civil No. 6808, W.D. Wash. Judgment for defendant, May 12, 1967; summary judgment entered May 25, 1967; no appeal.

Estate of Richard Lucero, 1 IBIA 46 (December 28, 1970)

Eunice Lucero Vaila v. Rogers C. B. Morton, et al., Civil No. 9585, D. Wash. Suit pending.

Bess May Lutey, 76 I.D. 37 (1969)

Bess May Lutey, et al. v. Dept. of Agriculture, BLM, et al., Civil No. 1817, D. Mont. Judgment for defendant, December 10, 1970; no appeal.

James W. McDade, 3 IBLA 226 (September 10, 1971)

James W. McDade v. Rogers C. B. Morton, Civil No. 2437-71. Suit pending.

Sheridan L. McGarry, A-28759 (January 26, 1962)

Sheridan L. McGarry v. Stewart L. Udall, Civil No. 1262-62. Judgment for defendant, 216 F. Supp. 314 no petition.

Elgin A. McKenna Executrix, Estate of Patrick A. McKenna, 74 I.D. 133 (1967)

Mrs. Elgin A. McKenna as Executrix of the Estate of Patrick A. McKenna, Deceased v. Udall, Civil No. 2001-67. Judgment for defendant, February 14, 1968; aff'd., 418 F. 2d 1171 (1969); no petition.

Mrs. Elgin A. McKenna, Widow and Successor in Interest of Patrick A. McKenna, Deceased v. Walter J. Hickel, Secretary of the Interior, et al., Civil No. 2401, D. Ky. Dismissed with prejudice, May 11, 1970.

A. G. McKinnon, 62 I.D. 164 (1955)

A. G. McKinnon v. U.S., Civil No. 9433, D. Ore. Judgment for plaintiff, 178 F. Supp. 913 (1959); rev'd., 289 F. 2d 908 (9th Cir. 1961).

Estate of Alvina Beauvois McLean, IA-D-27 (February 14, 1969), IA-D-30 (July 24, 1969)

Kenneth Samuel McLean v. Walter J. Hickel, Secretary of the Interior, Civil No. 2721-69, D. C. Judgment for defendant, March 13, 1970; dismissed for lack of prosecution, April 9, 1971.

Wade McNail, et al., 64 I.D. 423 (1957)

Wade McNail v. Fred A. Seaton, Civil No. 648-58. Judgment for defendant, June 5, 1959 (opinion); rev'd., 281 F. 2d 931 (1960); no petition.

Wada McNeil v. Albert K. Leonard, et al., Civil No. 2226, D. Mont. Dismissed, 199 F. Supp. 671 (1961); order, April 16, 1962.

Wade McNeil v. Stewart L. Udall, Civil No. 678-62. Judgment for defendant, December 13, 1963 (opinion); aff'd., 340 F. 2d 801 (1964); cert. denied, 381 U.S. 904 (1965).

Wade McNeil, A-30736 (April 20, 1967)

Wade McNeil v. Udall, Civil No. 2705, D. Mont. Judgment for defendant, February 6, 1969 (opinion); no appeal.

Billy Mathis, et al., A-30512 (July 6, 1966)

Billy Mathis, et al. v. Stewart L. Udall, et al., Civil No. 6833, D. N.M. Dismissed with prejudice, January 6, 1967; rendered moot by P.L. 89-365.

Ralph E. May, A-29014 (January 30, 1962)

Ralph E. May v. Stewart L. Udall, Civil No. 1379-62. Dismissed with prejudice, March 22, 1963; no appeal.

Estate of Oliver Maynahonah, IA-1522 (No dec.), IA-T-1 (June 30, 1966)

Ruth Maynahonah Kadayso v. Stewart L. Udall, Civil No. 66-281, W.D. Okla. Dismissed with prejudice, February 8, 1967.

Allan E. Mecham, et al., A-30244 (December 23, 1964)

Allan E. Mecham, et al. v. Stewart L. Udall, et al., Civil No. C-22-65, D. Utah. Motion to dismiss granted, May 11, 1965; aff'd., 369 F. 2d 1 (10th Cir. 1966); no petition.

Salvatore Magna, Guardian, Philip T. Garigan, 65 I.D. 33 (1958)

Salvatora Magna, Guardian atc. v. Fred A. Seaton, Civil No. 468-58. Judgment for plaintiff, November 16, 1959; motion for reconsideration denied, December 2, 1959; no appeal.

Philip T. Garigan v. Stewart L. Udall, Civil No. 1577 Tux., D. Ariz. Preliminary injunction against defendant, July 27, 1966; supplemental dec. rendered September 7, 1966; judgment for plaintiff, May 16, 1967; no appeal.

Meva Corp., 76 I.D. 205 (1969)

Meva Corp. v. U.S., Ct. Cl. No. 492-69. Suit pending.

Donald E. Miller, 2 IBLA 309 (May 26, 1971)

Donald E. Miller v. Walter J. Hickel, et al., Civil No. C-70-2328, D. Cal. Suit pending.

Duncan Miller, A-27620 (July 28, 1958)

Duncan Miller v. Fred A. Seaton, Civil No. 346-60. Judgment for defendant, February 23, 1961; aff'd., 307 F. 2d 676 (1962); cert. denied, 371 U.S. 967 (1963); rehearing denied, 372 U.S. 950 (1963).

Duncan Miller, Louise Cuccia, 66 I.D. 388 (1959)

Louise Cuccia and Shell Oil Co. v. Stewart L. Udall, Civil No. 562-60. Judgment for defendant, June 27, 1961; no appeal.

Duncan Miller, A-28008 (August 10, 1959), A-28093 et al. (October 30, 1959), A-28133 (December 22, 1959), A-28378 (August 5, 1960), A-28258 et al. (February 10, 1960).

Duncan Miller v. Stewart L. Udall, Civil No. 3470-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28057 (October 16, 1959), A-28398 (August 31, 1960), A-28359 (July 18, 1960), A-28433 (August 30, 1960), A-28293, A-28436 (June 7, 1960), A-27897, A-27914, A-27923, A-27930, A-28003, A-28014 (March 31, 1959), A-27810 (January 16, 1959).

Duncan Miller v. Stewart L. Udall, Civil No. 3931-60. Judgment for defendant, April 4, 1963; aff'd., per curiam dec., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28528 et al. (February 10, 1960)

Betty J. Lewis v. Stewart L. Udall, Civil No. 3904-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Duncan Miller, A-28509 (October 20, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 187-61. Judgment for defendant, May 24, 1963; no appeal.

Duncan Miller, A-28172 (February 11, 1960), A-28267 (June 8, 1960)

Duncan Miller v. Stewart L. Udall, Civil No. 3932-60. Judgment for defendant, May 22, 1963; aff'd., February 7, 1964; no petition.

Duncan Miller v. Stewart L. Udall, Civil No. 1642-64. Dismissed with prejudice, August 13, 1964; aff'd., January 12, 1965; no petition.

Duncan Miller, A-28586, A-28633, A-28671, A-28686 (January 25, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 1268-61. Judgment for defendant, September 28, 1962; appeal dismissed (1963).

Duncan Miller, A-28647 (July 20, 1961)

Duncan Miller v. Stewart L. Udall, Civil No. 3409-61. Judgment for defendant, May 21, 1963; no appeal.

Duncan Miller, A-29312 (January 29, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1381-62. Judgment for defendant, November 21, 1962 (opinion); appeal dismissed April 12, 1963.

Duncan Miller, A-28937 (September 25, 1962), A-29041 (November 7, 1962)

Duncan Miller v. Stewart L. Udall, Civil No. 4003-62. Dismissed for want of prosecution, May, 1966.

Duncan Miller, A-29365 (July 1, 1963), A-29521 (August 29, 1963), and A-29633 (September 5, 1963).

Duncan Miller v. Stewart L. Udall, Civil No. 2413-63. Dismissed, October 2, 1967; no appeal.

Duncan Miller, 70 I.D. 1 (1963)

Duncan Miller v. Stewart L. Udall, Civil No. 931-63. Dismissed for lack of prosecution, April 21, 1966; no appeal.

Duncan Miller, Samuel W. McIntosh, 71 I.D. 121 (1964)

Samuel W. McIntosh v. Stewart L. Udall, Civil No. 1522-64. Judgment for defendant, June 29, 1965; no appeal.

Duncan Miller, A-29900 (March 5, 1964), A-30067 (March 12, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 689-64. Dismissed for failura to prosecute, July 6, 1966.

Duncan Miller, A-30213 (April 8, 1964), A-30192 (April 9, 1964), A-30212 (July 13, 1964)

Duncan Miller v. Stewart L. Udall, Civil No. 1829-64. Judgment for defendant, September 28, 1965; no appeal.

Duncan Miller, A-30122 (September 23, 1964), A-30451 (November 17, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2543-64. Motion to amend granted, February 15, 1966; dismissed, April 3, 1969; no appeal.

Duncan Miller, A-30270 (Mav 5, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. C-153-65, D. Utah. Judgment for defendant, November 15, 1965; aff'd., 368 F. 2d 548 (10th Cir. 1966); no petition.

Duncan Miller, A-30434 (June 8, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 9477, N.D. Cal. Judgment for defendant, June 27, 1966; no appeal.

Duncan Miller, A-30393 (June 30, 1965)

Duncan Miller v. Stewart L. Udall, Civil No. 2384-65. Judgment for defendant, October 12, 1966; dismissed May 22, 1967; supp. complaint dismissed June 12, 1967; appeal dismissed April 12, 1968; petition for mandamus denied, October 14, 1968.

Duncan Miller, A-30517 (April 28, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. 5047, D. Wyo. Judgment for defendant, August 11, 1966; appeal dismissed, September 14, 1967.

Duncan Miller, A-30570 (August 3, 1966)

Duncan Miller v. Stewart L. Udall, Civil No. A-139-66, D. Alas. Judgment for defendant, March 13, 1967; motion for reconsideration denied, September 19, 1967; no appeal.

Duncan Miller, A-30546 (August 10, 1966), A-30566 (August 11, 1966), and 73 I.D. 211 (1966)

Duncan Miller v. Udall, Civil No. C-167-66, D. Utah. Dismissad with prejudice, April 17, 1967; no appeal.

Duncan Miller, A-29231 (February 5, 1963) See Lucille S. West, Duncan Miller, et al.

Duncan Miller, A-30669 (November 8, 1966)

Duncan Miller v. Director of the Bureau of Land Management, Civil No. 779, D. Mont. Judgment for defendant, April 25, 1969; no appeal.

Duncan Miller, A-30628 (November 16, 1966), A-30684 (January 19, 1967), A-30708 (November 16, 1966), A-30797 (September 12, 1967)

Duncan Miller v. Secretary of the Interior and his officers, Civil No. 7334, D. N.M. Dismissed with prejudice, August 28, 1968.

Duncan Miller, A-30891 (March 5, 1968)

Duncan Miller v. Udall, Civil No. 745-68. Dismissed with prejudice, October 14, 1968; no appeal.

Duncan Miller, A-30924 (November 13, 1968), A-30934 (November 22, 1968), A-30966 (October 29, 1968), A-31054 (August 21, 1969)

Duncan Miller v. Secretary of the Interior, Civil No. 52-69. Dismissed without prejudice, July 20, 1970; motion for reinstatement of complaint denied, January 10, 1972.

Duncan Miller, A-31087 (February 4, 1970), A-31095 (February 2, 1970), A-31148 (March 2, 1970), A-31159 (March 2, 1970)

Duncan Miller v. Officers of the BLM & Dept. of the Interior, Civil No. 1393-70. Suit pending.

H. D. Mollohan & Eagle Tail Ranch, A-29335 (July 8, 1963)

H. D. Mollohan, et al. v. Warren J. Gray, et al., Civil No. 4877 Phx., D. Ariz. Judgment for defendant, November 13, 1967; aff'd., 413 F. 2d 349 (9th Cir. 1969); no petition.

Howard S. Mollring, A-29498 (July 26, 1963)

Howard S. Mollring v. J. E. Keough, et al., Civil No. C-200-63, D. Utah. Judgment for defendant, January 8, 1964; no appeal.

Bobby Lee Moore, et al., 72 I.D. 505 (1965) Anquita L. Kluenter, et al., A-30483 (November 18, 1965)

Gary Carson Lewis, etc., et al. v. General Services Administration, et al., Civil No. 3253 S.D. Cal. Judgment for defendant, April 12, 1965; aff'd., 377 F. 2d 499 (9th Cir. 1967); no petition.

Henry S. Morgan, et al., 65 I.D. 369 (1958)

Henry S. Morgan v. Stewart L. Udall, Civil No. 3248-59. Judgment for defendant, February 20, 1961 (opinion); aff'd., 306 F. 2d 799 (1962); cert. denied, 371 U.S. 941 (1962).

Morrison-Knudsen Co., 64 I.D. 185 (1957)

Morrison-Knudsen Co. v. U.S., Ct. Cl. No. 239-61. Remanded to Trial Comm'r., 345 F. 2d 833 (1965); Commr's. report adverse to U.S. issued June 20, 1967; judgment for plaintiff, 397 F. 2d 826 (1968); part remanded to the Board of Contract Appeals; stipulated dismissal on October 6, 1969; judgment for plaintiff, February 17, 1970.

New York State Natural Gas Corp., A-28687 (July 19, 1962)

Jacob N. Wasserman v. Stewart L. Udall, Civil No. 3207-62. Judgment for defendant, 234 F. Supp. 651 (1964); no appeal.

Jess H. Nicholas, Jr., A-30065 (October 13, 1964)

Jess H. Nicholas, Jr. v. Stewart L. Udall, Civil No. A-67-64, D. Alas. Judgment for defendant, September 17, 1965; aff'd., 385 F. 2d 177 (9th Cir. 1967); no petition.

Leonard E. Noren, A-27583 (September 13, 1960)

Leonard E. Noren v. Walter E. Beck, Civil No. 2139 ND, S.D. Cal. Judgment for defendant, 199 F. Supp. 708 (1961).

Leonard E. Noren v. Walter E. Beck, Civil No. 2347 ND, S.D. Cal. Judgment for plaintiff, September 17, 1965; rev'd. & remanded sub nom. Robert E. McCarthy, successor to Walter E. Beck v. Leonard E. Noren, et al., rev'd. & remanded, 370 F. 2d 845 (9th Cir. 1966); cert. denied, 387 U.S. 917 (1967).

Appeal of North Star Aviation Corp., IBCA-741 (May 19, 1969)

North Star Aviation Corp. v. U.S., Ct. Cl. No. 264-69. Commr's. report adverse to U.S. issued December 10, 1971.

Richard L. Oelschlaeger, 67 I.D. 237 (1960)

Richard L. Oelschlaeger v. Stewart L. Udall, Civil No. 4181-60. Dismissed, November 15, 1963; case reinstated, February 19, 1964; remanded, April 4, 1967; rev'd. & remanded with directions to enter judgment for appellant, 389 F. 2d 974 (1968); cert. denied, 392 U.S. 909 (1968).

Oil and Gas Leasing on Lands Withdrawn by Executive Orders for Indian Purposes in Alaska, 70 I.D. 166 (1963)

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. 760-63, D. Alas. Withdrawn April 18, 1963.

Superior Oil Co. v. Robert L. Bennett, Civil No. A-17-63, D. Alas. Dismissed, April 23, 1963.

Native Village of Tyonek v. Robert L. Bennett, Civil No. A-15-63, D. Alas. Dismissed, October 11, 1963.

Mrs. Louise A. Pease v. Stewart L. Udall, Civil No. A-20-63, D. Alas. Dismissed, October 29, 1963 (oral opinion); aff'd., 332 F. 2d 62 (9th Cir. 1964); no petition.

George L. Gucker v. Stewart L. Udall, Civil No. A-39-63, D. Alas. Dismissed without prejudice, March 2, 1964; no appeal.

Joseph I. O'Neill, Jr., A-30488 (April 19, 1966)

Joseph I. O'Neill, Jr. v. Stewart L. Udall, Civil No. 3556-SD-K, S.D. Cal. Order denying defendant's motion for summary judgment, without prejudice & remanding case for clarification of Departmental decision, March 8, 1967; no appeal.

Eugene C. Paine, et al., A-27632 (August 21, 1958)

Eugene C. Paine, et al. v. Stewart L. Udall, Civil No. 2607-58. Judgment for plaintiff, September 24, 1959; vacated & remanded, Wright v. Seaton, Misc. 1403, January 11, 1960. Judgment for plaintiff, May 4, 1960; rev'd. & remanded, February 23, 1961; judgment for defendant, March 20, 1961; no petition.

Irene Mitchell Pallin, A-28766 (September 21, 1962)

Irene Mitchell Pallin v. U.S., Civil No. 47552, N.D. Cal. Judgment for plaintiff, December 16, 1970; appeal docketed February 12, 1971.

Pan American Petroleum Corp., IA-840 (December 18, 1959)

Pan American Petroleum Corp. v. Stewart L. Udall, Civil No. 960-60. Judgment for plaintiff, 192 F. Supp. 626 (1961); subsequent administrative appeal & supplemental complaint filed; judgment for plaintiff, February 16, 1966; no appeal.

Paul Jarvis, Inc., 64 I.D. 285 (1957)

Paul Jarvis, Inc. v. U.S., Ct. Cl. No. 40-58. Stipulated judgment for plaintiff, December 19, 1958.

Perry & Wallis, Inc., IBCA-617 (July 16, 1968)

Perry & Wallis, Inc. v. U.S., Ct. Cl. 365-68. Judgment for defendant, 427 F. 2d 722 (1970).

Peter Kiewit Sons' Co., 72 I.D. 415 (1965)

Peter Kiewit Sons' Co. v. U.S., Ct. Cl. 129-66. Judgment for plaintiff, May 24, 1968.

Estate of Pete-Goh-Deh-Dil (Joe Pete), IA-1322 (June 7, 1966)

Don & Winona James v. Mabel George Gomez, et al., Civil No. S-66-104, E.D. Cal. Dismissed with prejudice as to defendants Udall, Crow & Hall, May 22, 1969; dismissed with prejudice as to defendant Gomez, September 1, 1970.

M. Blaine Peterson, A-28111 (November 23, 1959)

L. Robert Anderson v. Stewart L. Udall, Civil No. 3953-60. Dismissed without prejudice, November 13, 1961; no appeal.

Petroleum Ownership Map Co., IBCA-110 (May 29, 1958)

Petroleum Ownership Map Co. v. U.S., Ct. Cl. 269-62. Judgment for plaintiffs, 389 F. 2d 793 (1968).

Harold Ladd Pierce, 69 I.D. 14 (1962)

Duncan Miller v. Stewart L. Udall, Civil No. 1351-62. Judgment for defendant, August 2, 1962; aff'd., 317 F. 2d 573 (1963); no petition.

Platte Valley Construction Co., IBCA-168 (August 28, 1958)

George Stanek, et al. v. U.S., Ct. Cl. 189-62. Compromised.

John M. Pomeroy, A-28134 (January 13, 1960)

John M. Pomeroy v. Walter E. Beck, Civil No. 8033, N.D. Cal. Dismissed by plaintiff, August 15, 1961; no appeal.

Port Blakely Mill Co., 71 I.D. 217 (1964)

Port Blakely Mill Co. v. U.S., Civil No. 6205, W.D. Wash. Dismissed with prejudice, December 7, 1964.

Preston Nutter Corp., IBLA-70-144 (appeal pending)

Preston Nutter Corp. v. Walter J. Hickel, Civil No. 294-70, D. Utah. Suit pending.

Property Management Co., A-29144 (August 19, 1963)

Property Management Co. v. Stewart L. Udall, Civil No. 64-28, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

R. E. Puckett, A-30419 (October 29, 1965)

Robert E. Puckett v. Stewart L. Udall, Secretary of the Interior, Civil No. 2786-65. Dismissed without prejudice, August 15, 1966.

Ethel C. Radzewicz, et al., A-30866 (January 29, 1968)

Georgette B. Lee (Hall) v. Udall, Civil No. 985-68. Judgment for defendant, October 30, 1969; dismissed, November 17, 1970.

Ray D. Bolander Co., 72 I.D. 449 (1965)

Ray D. Bolander Co. v. U.S., Ct. Cl. 51-66. Judgment for plaintiff, December 13, 1968; subsequent Contract Officer's dec., December 3, 1969; interim dec., December 2, 1969; Order to Stay Proceedings until March 31, 1970; dismissed with prejudice, August 3, 1970.

Estate of Elgin Red Elk, IA-1230 (November 13, 1964)

Bert Taunah, et al. v. Stewart Udall, Civil No. 65-82, W.D. Okla. Judgment for plaintiff, April 27, 1967; rev'd. & remanded, 398 F. 2d 795 (10th Cir. 1968); no petition.

R. G. Brown, Jr. & Co., IBCA-356 (July 26, 1963)

Robert G. Brown, Jr., et al. v. U.S., Ct. Cl. No. 373-63. Judgment for plaintiff, April 6, 1965; no appeal.

Richfield Oil Corp., 62 I.D. 269 (1955)

Richfield Oil Corp. v. Fred A. Seaton, Civil No. 3820-55. Dismissed without prejudice, March 6, 1958; no appeal.

Hugh S. Ritter, Thomas M. Bunn, 72 I.D. 111 (1965)

Thomas M. Bunn v. Stewart L. Udall, Civil No. 2615-65. Suit pending.

Estate of William Cecil Robedeaux, 1 IBIA 106; 78 I.D. 234 (1971)

Oneta Lamb Robedeaux, et al. v. Rogers C. B. Morton, Civil No. 71-646, D. Okla. Suit pending.

Evelyn R. Robertson, et al., Duncan Miller, A-29251 (March 21, 1963)

Duncan Miller v. Stewart L. Udall, Civil No. 1066-63. Judgment for defendant, March 13, 1964; aff'd., 349 F. 2d 193 (1965); cert. denied, 385 U.S. 929 (1966); rehearing denied, 385 U.S. 1021 (1966).

W. C. Wells v. Stewart L. Udall, Civil No. A-37-63, D. Alas. Dismissed with prejudice, September 7, 1965; no appeal.

Evelyn R. Robertson v. Stewart L. Udall, Civil No. 1561-63. Judgment for defendant, April 4, 1964; aff'd., 349 F. 2d 195 (1965); no petition.

Amos D. & Lena S. Robinette, A-31036, A-31133 (March 4, 1970)

Amos D. Robinette v. Rogers C. B. Morton, et al., Civil No. 71-1156-HP, C. D. Calif. Dismissed with prejudice, October 22, 1971; appeal docketed December 27, 1971.

Edgar Rundle, A-29593 (August 2, 1963)

Edgar Rundle v. Stewart L. Udall, Civil No. 191-65. Judgment for defendant, September 22, 1965; aff'd., 379 F. 2d 112 (1967); cert. denied, 389 U.S. 845 (1967).

Estate of James Running Horse, IA-1048 (May 26, 1960)

Mary Hit Him Running Horse v. Stewart L. Udall, Civil No. 2106-68. Judgment for plaintiff, 211 F. Supp. 586 (1962); no appeal.

Louise Safarik, A-28307 et al. (April 22, 1960)

John J. King v. Stewart L. Udall, Civil No. 3903-60. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

Louise Safarik, et al., A-28562 et al. (January 26, 1961)

Louise Safarik v. Stewart L. Udall, Civil No. 1081-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); cert. denied, 371 U.S. 901 (1962).

Samuel Gary v. Stewart L. Udall, Civil No. 1202-61. Judgment for defendant, June 23, 1961; aff'd., 304 F. 2d 944 (1962); no petition.

San Carlos Mineral Strip, 69 I.D. 195 (1962)

James Houston Bowman v. Stewart L. Udall, Civil No. 105-63. Judgment for defendant, 243 F. Supp. 672 (1965); aff'd., sub nom. S. Jack Hinton, et al. v. Stewart L. Udall, 364 F. 2d 676 (1966); cert. denied, 385 U.S. 878 (1966); supplemented by M-36767, November 1, 1967.

B. F. Sandoval, Jr., A-29975 (June 12, 1964)

B. F. Sandoval, Jr. v. Stewart L. Udall, Civil No. 5779, D. N.M. Judgment for plaintiff, May 11, 1965; appeal dismissed January 12, 1966; order vacating prior judgment issued January 28, 1966.

Santa Fe Sand & Gravel Co., A-30657 (April 25, 1967)

Santa Fe Sand & Gravel Co. v. Boyd L. Rasmussen, et al., Civil No. 7135, D. N.M. Summary judgment for defendant, May 28, 1968; no appeal.

Casper Joseph Schmand, Attorney in fact for Mike Swab, A-29451 (August 19, 1963)

Casper Joseph Schmand v. Stewart L. Udall, Civil No. 63-484, D. Ore. Judgment for defendant, 255 F. Supp. 382 (1966); appeal dismissed, October 13, 1966. See Linn Land Co. v. Udall.

Ann D. Schmidt, A-28349 (July 28, 1960)

Ann D. Schmidt v. Stewart L. Udall, Civil No. 3912-60. Judgment for defendant, April 11, 1961; no appeal.

Betty Mae Schober & John L. Richardson, A-29430 (January 8, 1964). Reconsideration denied, March 6, 1964.

John L. Richardson v. Stewart L. Udall, Civil No. 3975, D. Idaho. Remanded, 253 F. Supp. 72 (1966); no appeal.

Charles Schraier, Robert Schulein, et al., A-30814, A-30816 (November 21, 1967)

Charles Schraier v. Stewart L. Udall, Secretary of the Interior, Civil No. 427-68. Judgment for defendant, October 31, 1968; aff'd., 419 F. 2d 663 (1969); petition for rehearing en banc denied, October 8, 1969; no petition.

Joseph M. Schuck, A-28603 (August 16, 1961)

Joseph M. Schuck v. Secretary of the Interior, No. 16,682. Petition for review dismissed, December 15, 1961; no appeal.

Joseph M. Schuck v. Secretary of the Interior, Civil No. 1402 Tuc., D. Ariz. Complaint dismissed, January 30, 1962; no appeal.

Joseph M. Schuck v. Roy T. Helmandollar, Civil No. 1402 Tuc., D. Ariz. Judgment for defendant, March 19, 1962; no appeal.

Seal and Co., 68 I.D. 94 (1961)

Seal & Co. v. U.S., Ct. Cl. 274-62. Judgment for plaintiff, January 31, 1964; no appeal.

John W. Shaw, A-29143 (April 5, 1963)

John W. Shaw v. Stewart L. Udall, Secretary of the Interior, Civil No. 63-602, D. Ore. Aff'd., 264 F. Supp. 390 (1967); appeal docketed March 13, 1967; appeal dismissed.

Shell Oil Co., A-30575 (October 31, 1966), Chargeability of Acreage Embraced in Oil & Gas Lease Offers, 71 I.D. 337 (1964)

Shell Oil Co. v. Udall, Civil No. 216-67. Stipulated dismissal, August 19, 1968.

Silverton Mining & Milling Co., IBLA-70-22 (September 23, 1970)

Multiple Use Inc. v. Morton, Civil No. 71-211, D. Ariz. Suit pending.

Sinclair Oil & Gas Co., 75 I.D. 155 (1968)

Sinclair Oil & Gas Co. v. Stewart L. Udall, Secretary of the Interior, et al., Civil No. 5277, D. Wyo. Judgment for defendant, sub nom. Atlantic Richfield Co. v. Walter J. Hickel, 303 F. Supp. 724 (1969); aff'd., 432 F. 2d 587 (10th Cir. 1970); no petition.

Eldon L. Smith, A-30944 (October 15, 1968)

D. L. Hannifin v. Walter J. Hickel, et al., Civil No. 8074, D. N.M. Judgment for defendant, January 6, 1970; remanded, May 25, 1970; judgment for defendant, May 28, 1970; aff'd., 440 F. 2d 200 (10th Cir. 1971); no petition.

Eldon L. Smith, A-30944 (October 15, 1968)

Eldon L. Smith v. Walter J. Hickel, Civil No. 69-245, D. Ariz. Judgment for defendant, February 3, 1970.

L. B. Smith, et al., A-30447 (October 29, 1965)

Charles J. Babington v. Stewart L. Udall, Civil No. 3048-65. Dismissed without prejudice for failure of prosecution, May 1, 1967; no appeal.

Stanley C. Soho, A-28135 (August 19, 1959), A-28135 Supp. (July 17, 1961), Supplemented by decision dated February 1, 1963, by Director, Bureau of Land Management, approved by the Secretary March 18, 1963.

Robert V. Ferry & Irving Baker v. Stewart L. Udall, Civil No. 1648 Tuc., D. Ariz. Judgment for defendant, September 3, 1963; aff'd., 336 F. 2d 706 (9th Cir. 1964); cert. denied 381 U.S. 904 (1965).

Stanley C. Soho, et al., A-28175 (April 11, 1960)

Albert Meeks v. E. I. Rowland, Civil No. 3461-Phx., D. Ariz. Case dismissed, January 17, 1961; no appeal.

Southern Pacific Co., 76 I.D. 1 (1969)

Southern Pacific Co. v. Walter J. Hickel, Secretary of the Interior, Civil No. S-1274, D. Cal. Judgment for defendant, December 2, 1970 (opinion); no appeal.

Southport Land & Commercial Co., Sacramento 075330 (January 15, 1964)

Southport Land & Commercial Co. v. Stewart Udall, et al., Civil No. 42385, N.D. Cal. Dismissed as to defendant Stewart Udall, 244 F. Supp. 172 (1965); aff'd., 371 F. 2d 526 (9th Cir. 1967); no petition.

Southwest Welding and Manufacturing Division, Yuba Consolidated Industries, Inc., 69 I.D. 173 (1962)

Southwest Welding v. U.S., Civil No. 68-1658-CC, C.D. Cal. Judgment for plaintiff, January 14, 1970; appeal dismissed, April 6, 1970.

Southwestern Petroleum Corp., et al., 71 I.D. 206 (1964)

Southwestern Petroleum Corp. v. Stewart L. Udall, Civil No. 5773, D. N.M. Judgment for defendant, March 8, 1965; aff'd., 361 F. 2d 650 (10th Cir. 1966); no petition.

Standard Oil Co. of California, et al., 76 I.D. 271 (1969)

Standard Oil Co. of California v. Walter J. Hickel, et al., Civil No. A-159-69, D. Alas. Judgment for plaintiff, 317 F. Supp. 1192 (1970); appeal docketed November 19, 1970.

Standard Oil Co. of Texas, 71 I.D. 257 (1964)

California Oil Co. v. Secretary of the Interior, Civil No. 5729, D. N.M. Judgment for plaintiff, January 21, 1965; no appeal.

Ross Stegman, A-30812 (November 21, 1967)

Ross Stegman v. Stewart L. Udall, Civil No. 6953 Phx., D. Ariz. Remanded to Hearing Examiner for taking of further evidence, December 12, 1969.

Florence Emily Tagala v. Amanda Nellie Ruth Price, A-30715 (November 10, 1966)

Amanda Price v. Udall, Civil No. 33-67, D. Alas. Judgment for plaintiff, 280 F. Supp. 393 (1968); remanded to Bureau of Land Management, 411 F. 2d 589 (9th Cir. 1969); no petition.

James K. Tallman, 68 I.D. 256 (1961)

James K. Tallman, et al. v. Stewart L. Udall, Civil No. 1852-62. Judgment for defendant, November 1, 1962 (opinion); rev'd., 324 F. 2d 411 (1963); cert. granted, 376 U.S. 961 (1964); Dist. Ct. aff'd., 380 U.S. 1 (1965); rehearing denied, 380 U.S. 989 (1965).

Texaco, Inc., 75 I.D. 8 (1968)

Texaco, Inc., a Corp. v. Secretary of the Interior, Civil No. 446-68. Judgment for plaintiff, 295 F. Supp. 1297 (1969); remanded, August 19, 1970.

Texas Construction Co., 64 I.D. 97 (1957) Reconsideration denied, IBCA-73 (June 18, 1957)

Texas Construction Co. v. U.S., Ct. Cl. No. 224-58. Stipulated judgment for plaintiff, December 14, 1961.

Estate of John Thomas, Deceased Cayuse Allottee No. 223 and Estate of Joseph Thomas, Deceased, Umatilla Allottee No. 877, 64 I.D. 401 (1957)

Joe Hayes v. Fred A. Seaton, Secretary of the Interior, Civil No. 859-581. Judgment for defendant, September 18, 1958; aff'd., 270 F. 2d 319 (1959); cert. denied, 364 U.S. 814 (1960); rehearing denied, 364 U.S. 906 (1960).

Thor-Westcliffe Development, Inc., 70 I.D. 134 (1963)

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, Civil No. 5343, D. N.M. Dismissed with prejudice June 25, 1963.

See also:

Thor-Westcliffe Development, Inc. v. Stewart L. Udall, et al., Civil No. 2406-61. Judgment for defendant, March 22, 1962; aff'd., 314 F. 2d 257 (1963); cert. denied, 373 U.S. 951 (1963).

Richard K. Todd, et al., 68 I.D. 291 (1961)

Bert F. Duesing v. Stewart L. Udall, Civil No. 290-62. Judgment for defendant, July 17, 1962 (oral opinion); aff'd., 350 F. 2d 748 (1965); cert. denied, 383 U.S. 912 (1966).

Atwood, et al. v. Stewart L. Udall, Civil Nos. 293-62 - 299-62, incl. Judgment for defendant, August 2, 1962; aff'd., 350 F. 2d 748 (1965); no petition.

E. B. Todhunter, A-28197 (May 23, 1960)

Victoria L. Cuccia v. Stewart L. Udall, Civil No. 3921-60. Judgment for defendant, September 17, 1963; no appeal.

Tree Land Nursery, Inc., IBCA-436 (October 31, 1966)

Tree Land Nursery, Inc. v. U.S., Ct. Cl. 238-67. Judgment for plaintiff, May 13, 1969.

Tyee Construction Co., IBCA-112 and 113 (April 30, 1958)

Tyee Construction Co. v. U.S., Ct. Cl. No. 312-60. Judgment for defendant, June 1, 1962; no appeal.

Union Oil Co. Bid on Tract 228, Brazos Area, Texas Offshore Sale, 75 I.D. 147 (1968), 76 I.D. 69 (1969)

The Superior Oil Co., et al. v. Stewart L. Udall, Civil No. 1521-68. Judgment for plaintiff, July 29, 1968, modified, July 31, 1968; aff'd., 409 F. 2d 1115 (1969); dismissed as moot, June 4, 1969; no petition.

Union Oil Co. of California, Ramon P. Colvert, 65 I.D. 245 (1958)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 3042-58. Judgment for defendant, May 2, 1960 (opinion); aff'd., 289 F. 2d 790 (1961); no petition.

Union Oil Company of California, et al., 71 I.D. 169 (1964), 72 I.D. 313 (1965)

Penalope Chase Brown, et al. v. Stewart Udall, Civil No. 9202, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971.

Equity Oil Co. v. Stewart L. Udall, Civil No. 9462, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Gabbs Exploration Co. v. Stewart L. Udall, Civil No. 9464, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Harlan H. Hugg, et al. v. Stewart L. Udall, Civil No. 9252, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

Barnette T. Napier, et al. v. Secretary of the Interior, Civil No. 8691, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971.

John W. Savage v. Stewart L. Udall, Civil No. 9458, D. Colo. Order to Close Files and Stay Proceedings, March 25, 1967.

The Oil Shale Corp., et al. v. Secretary of the Interior, Civil No. 8680, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971.

The Oil Shale Corp., et al. v. Stewart L. Udall, Civil No. 9465, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Joseph B. Umpleby, et al. v. Stewart L. Udall, Civil No. 8685, D. Colo. Judgment for plaintiff, 261 F. Supp. 954 (1966); aff'd., 406 F. 2d 759 (10th Cir. 1969); cert. granted, 396 U.S. 817 (1969); rev'd. & remanded, 400 U.S. 48 (1970); remanded to Dist. Ct., March 12, 1971.

Union Oil Co. of California, a Corp. v. Stewart L. Udall, Civil No. 9461, D. Colo. Order to Close Files & Stay Proceedings, March 25, 1967.

Union Oil Co. of California, 71 I.D. 287 (1964)

Union Oil Co. of California v. Stewart L. Udall, Civil No. 2595-64. Judgment for defendant, December 27, 1965; no appeal.

Union Pacific R.R., 72 I.D. 76 (1965)

The State of Wyoming and Gulf Oil Corp. v. Stewart L. Udall, etc., Civil No. 4913, D. Wyo. Dismissed with prejudice, 255 F. Supp. 481 (1966); aff'd., 379 F. 2d 635 (10th Cir. 1967); cert. denied, 389 U.S. 985 (1967).

United Technical Industries, Inc., A-29406 (April 24, 1963)

Jay Nielson v. J. E. Keough, et al., Civil No. C-158-63, D. Utah. Dismissed July 13, 1964 (opinion); no appeal.

U.S. v. Alonzo A. Adams, et al., 64 I.D. 221 (1957), A-27364 (July 1, 1957)

Alonzo A. Adams, et al. v. Paul B. Witmer, et al., Civil No. 1222-57-Y, S.D. Cal. Complaint dismissed, November 27, 1957 (opinion); rev'd. & remanded, 271 F. 2d 29 (9th Cir. 1958); on rehearing, appeal dismissed as to Witmer; petition for rehearing by Berriman denied, 271 F. 2d 37 (9th Cir. 1959).

U.S. v. Alonzo Adams, Civil No. 187-60-WM, S.D. Cal. Judgment for plaintiff, January 29, 1962 (opinion); judgment modified, 318 F. 2d 861 (9th Cir. 1963); no petition.

U.S. v. Arizona Exploration Co., et al., A-28876 (June 22, 1962)

Blaine J. Lord, et al. v. Roy T. Helmandollar, et al., Civil No. 987-63. Judgment for defendants, September 30, 1963; appeal dismissed, 348 F. 2d 780 (1965); cert. denied, 383 U.S. 928 (1966); rehearing denied, 384 U.S. 947 (1966).

U.S. v. E. A. Barrows and Esther Barrows, 76 I.D. 299 (1969)

Esther Barrows, as an individual and as Executrix of the Last Will of E. A. Barrows, deceased v. Walter J. Hickel, Civil No. 70-215-CC, C.D. Cal. Judgment for defendant, April 20, 1970; aff'd., 447 F. 2d 80 (9th Cir. 1971).

U.S. v. R. B. Borders, A-28624 (October 23, 1961)

J. R. Osborne v. Harold C. Hammitt, Civil No. 414, D. Nev. Judgment for defendant, August 19, 1964 (opinion); no appeal.

U.S. v. Alice A. & Carrie H. Boyle, 76 I.D. 61, 318 (1969), Reconsideration denied, January 22, 1970.

Alice A. & Carrie H. Boyle v. Rogers C. B. Morton, Secretary of the Interior, Civil No. Civ-71-491 Phx WEC, D. Ariz. Suit pending.

U.S. v. Calhoun & Howell of Oregon, Ltd., U.S. v. Lee Temple, A-31004 (August 29, 1969)

Calhoun & Howell of Oregon, Ltd. v. Walter J. Hickel, Civil No. 70-155, D. Ore. Judgment for defendant, September 24, 1970; no appeal.

U.S. v. John C. Chapman, et al., A-30581 (July 16, 1968)

John C. Chapman, et al. v. U.S., Civil No. 69-12 Pct., D. Ariz. Suit pending.

U.S. v. Nick Chournos, A-28577 (July 14, 1961)

Nick Chournos v. U.S., Civil No. C-164-61, D. Utah. Complaint dismissed, January 9, 1962; no appeal.

Nick Chournos, et al. v. U.S., et al., Civil No. C-238-62, D. Utah. Dismissed, June 28, 1963; aff'd., 335 F. 2d 918 (10th Cir. 1964); no petition.

U.S. v. Willard Christensen, A-27549 (May 14, 1958)

La Fortuna Uranium Mines, Inc. v. Fred A. Seaton, Civil No. 191-59. Judgment for defendant, April 4, 1960; no appeal.

U.S. v. J. R. Clements, A-27751 (December 15, 1958)

John Raymond Clements v. Fred A. Seaton, Civil No. 560-59. Judgment for defendant, January 13, 1960; no appeal.

U.S. v. Elsie Cody, 1 IBLA 92 (November 13, 1970)

Elsie Cody v. Walter J. Hickel, Civil No. 1-70-125, D. Idaho. Remanded to the Secretary of the Interior for taking of additional evidence, December 6, 1971.

U.S. v. Alfred Coleman, A-28557 (March 27, 1962)

U.S. v. Alfred Coleman, Civil No. 63-956-WB, S.D. Cal. Judgment for defendant, February 25, 1965 (opinion); remanded, 363 F. 2d 190 (9th Cir. 1966); aff'd., 379 F. 2d 555 (9th Cir. 1967); cert. grented, 389 U.S. 970 (1967); rev'd. and remanded to 9th Circuit, 390 U.S. 599 (1968); reheering denied, 391 U.S. 961 (1968); eff'd., 405 F. 2d 72 (9th Cir. 1968); cert. denied, 394 U.S. 907 (1969).

U.S. v. Ford M. Converse, 72 I.D. 141 (1965)

Ford M. Converse v. Stewart Udall, Civil No. 65-581, D. Ore. Judgment for defendant, 262 F. Supp. 583 (1966); aff'd., 399 F. 2d 616 (9th Cir. 1968); cert. denied, 393 U.S. 1025 (1969).

U.S. v. Jesse W. Crawford, A-30820 (January 29, 1968)

Jesse W. Crawford v. Stewart L. Udall, Civil No. 6969 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., May 10, 1971; no petition.

U.S. v. Alvis F. Denison, et el., 71 I.D. 144 (1964), 76 I.D. 233 (1969)

Marie W. Denison, individually & as executrix of the Estate of Alvis F. Denson, deceased v. Stewart L. Udall, Civil No. 963, D. Ariz. Remanded, 248 F. Supp. 942 (1965).

Leo E. Shoup v. Stewart L. Udall, Civil No. 5822-Phx., D. Ariz. Suit pending.

Reid Smith v. Stewart L. Udell, etc., Civil No. 1053, D. Ariz. Suit pending.

U.S. v. J. S. Devenny, A-30289 (August 6, 1964)

J. S. Devenny v. Stewart L. Udall, Civil No. 6283, W.D. Wash. Dismissed, June 22, 1966; no appeal.

U.S. v. Francis Dlouhy, et al., A-27668 (September 24, 1958)

Francis N. Dlouhy v. Fred A. Seaton, Civil No. 405-59. Judgment for defendent, May 3, 1960; appeal dismissed, November 28, 1960.

U.S. v. The Dredge Corp., A-28022 (December 18, 1959)

The Dredge Corp. v. J. Russell Penny, Civil No. 396, D. Nev. Judgment for defendant, September 25, 1962; remanded, 338 F. 2d 456 (9th Cir. 1964); judgment for plaintiff, August 8, 1966; judgment for defendants, 398 F. 2d 791 (9th Cir. 1968); cert. denied, 393 U.S. 1066 (1969).

U.S. v. Maurice Duval, et al., 1 IBLA 103 (November 23, 1970)

Maurice Duval, et al. v. Rogers C. B. Morton, Civil No. 71-684, D. Ore. Suit pending.

U.S. v. Ralph Feirchild, A-30803 (January 19, 1968)

Minerels Trust Corp. v. Stewart L. Udall, Civil No. 6960 Phx., D. Ariz. Judgment for defendant, May 20, 1969; aff'd., May 10, 1971; no petition.

U.S. v. Kathryn R. Fitzgerald, A-30973 (July 25, 1969)

Kathryn R. Fitzgerald & John Holden v. Walter J. Hickel, Civil No. 70-421-Phx., D. Ariz. Judgment for defendant, November 23, 1970.

U.S. v. Everett Foster, et al., 65 I.D. 1 (1958)

Everett Foster, et al. v. Fred A. Seaton, Civil No. 344-58. Judgment for defendants, December 5, 1958 (opinion); aff'd., 271 F. 2d 836 (1959); no petition.

U.S. v. Fred Garula, A-29948 (June 3, 1964)

Fred Garule v. Stewart L. Udell, Civil No. 8998, D. Colo. Judgment for plaintiff, 268 F. Supp. 910 (1967); rev'd., 405 F. 2d 1181 (10th Cir. 1968); no petition.

U.S. v. Golden Eagle Mining Corp., A-30864 (September 25, 1967)

Golden Eagle Mining Corp. v. Stewart L. Udell, Secretery of the Interior, Civil No. S-937, E.D. Cal. Dismissed for lack of prosecution, October 6, 1969; no appeal.

U.S. v. Richard P. Haskins, A-30737 (December 19, 1966)

Richard P. Haskins for himself & as Admin. of the Estate of Bartholomew H. Haskins, Deceased v. Udall, Civil No. 67-1815-CC, C.D. Cal. Judgment for defendant, April 15, 1968; remanded to the Director, Bureau of Land Management for an exercise of discretion, October 3, 1969.

U.S. v. Henault Mining Co., 73 I.D. 184 (1966)

Henault Mining Co. v. Harold Tysk, et al., Civil No. 634, D. Mont. Judgment for plaintiff, 271 F. Supp. 474 (1967); rev'd. & remanded for further proceedings, 419 F. 2d 766 (9th Cir. 1969); cert. denied, 398 U.S. 950 (1970); judgment for defendant, October 6, 1970.

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U.S. v. Charles H. Henrikson, et al., 70 I.D. 212 (1963)

Charles H. Henrikson, et al. v. Stewart L. Udall, et al., Civil No. 41749, N.D. Cal. Judgment for defendant, 229 F. Supp. 510 (1964); aff'd., 350 F. 2d 949 (9th Cir. 1965); cert. denied, 384 U.S. 940 (1966).

U.S. v. Taylor T. Hicks, et al., A-30780 (October 24, 1967)

Taylor T. Hicks, et al. v. U.S., Stewart L. Udall, Secretary of the Interior, Civil No. Civ.-1202 Pct., D. Ariz. Judgment for defendant, March 26, 1970.

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U.S. v. Mary A. Mattey, 67 I.D. 63 (1960)

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U.S. v. Alvin M. May, A-30675 (July 25, 1968)

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U.S. v. Kenneth McClarty, 71 I.D. 331 (1964), 76 I.D. 193 (1969)

Kenneth McClarty v. Stewart L. Udall, et al., Civil No. 2116, E.D. Wash. Judgment for defendant, May 26, 1966; rev'd. & remanded, 408 F. 2d 907 (9th Cir. 1969); remanded to the Secretary, May 7, 1969; vacated & remanded to Bureau of Land Management, August 13, 1969.

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U.S. v. Ernest Evon Moseley, A-30971 (December 13, 1967)

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U.S. v. G. C. (Tom) Mulkern, A-27746 (January 19, 1959)

G. C. (Tom) Mulkern v. James Keough, Civil No. 299, D. Nev. Judgment for defendant, February 19, 1963 (opinion); aff'd., 326 F. 2d 896 (9th Cir. 1964); no petition.

U.S. v. Melvin L. Nevitt, A-30030 (July 28, 1964)

U.S. v. Melvin L. Nevitt, Civil No. 3423-SD-C, S.D. Cal. Judgment for plaintiff, November 28, 1966; no appeal.

U.S. v. New Jersey Zinc Company, 74 I.D. 191 (1967)

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U.S. v. E. V. Pressentin, et al., A-27495 (April 2, 1958)

E. V. Pressentin v. Fred A. Seaton, Civil No. 4804, W.D. Wash. Voluntary dismissal by plaintiff entered July 24, 1959.

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U.S. v. C. F. Pruess, Sr., A-28641 (August 22, 1961)

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U.S. v. Cecil R. Reed, A-30354 (September 29, 1965)

Cecil R. Reed v. Stewart L. Udall, et al., Civil No. 1784, D. Nev. Judgment for defendant, December 19, 1967; aff'd., 416 F. 2d 377 (9th Cir. 1969); cert. denied, 397 U.S. 924 (1970).

U.S. v. George A. and Dorothy Relyea, A-30909 (June 25, 1968)

George A. Relyea & Dorothy Relyea v. Stewart Udall, Secretary of the Interior, Civil No. 3-68-20, D. Idaho. Judgment for defendant, February 19, 1970; no appeal.

U.S. v. Edwin R. Saurers, et al., A-30097 (July 9, 1964)

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U.S. v. Charles L. Seeley, et al., A-28127 (January 28, 1960)

Charles L. Seeley, et al. v. Secretary of the Interior, Civil No. 3693-60 & No. 41094, N.D. Cal. Judgment for defendant, July 29, 1964; appeal dismissed, December 16, 1964.

U.S. v. Ollie Mae Shearman et al., 73 I.D. 386 (1966)

U.S. v. Hood Corp., et al., Civil No. 1-67-97, S.D. Idaho. Suit pending.

U.S. v. Thomas R. Shuck, A-27965 (February 2, 1960)

Thomas R. Shuck v. Roy T. Helmandollar, Civil No. 682 Pct., D. Ariz. Judgment for defendant, December 7, 1961; no appeal.

U.S. v. U.S. Silica Corp., et al., A-30400 (August 24, 1965)

Simplot Industries, Inc. v. Udall, Civil No. 1024-S, D. Nev. Judgment for defendant, September 26, 1969; no appeal.

U.S. v. C. F. Snyder, et al., 72 I.D. 223 (1965)

Ruth Snyder, Adm'r[x] of the Estate of C. F. Snyder, Deceased, et al. v. Stewart L. Udall, Civil No. 66-C-131, D. Colo. Judgment for plaintiff, 267 F. Supp. 110 (1967); rev'd., 405 F. 2d 1179 (10th Cir. 1968); cert. denied, 396 U.S. 819 (1969).

U.S. v. Southern Pacific Co., 77 I.D. 41 (1970)

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U.S. v. Clarence T. & Mary D. Stevens, 77 I.D. 97 (1970)

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U.S. v. Charles E. Stewart, A-28966 (September 25, 1962)

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U.S. v. Alfred N. Verrue, 75 I.D. 300 (1968)

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U.S. v. Oscar W. Weiss, et al., A-30809 (September 14, 1967), IBLA-71-250 (Still pending)

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U.S. v. Rodney Wood, et al., A-30697 (May 31, 1967)

Rodney Wood, et al. v. Stewart L. Udall, Secretary of the Interior, & Orville L. Freeman, Secretary of Agriculture, Civil No. S-436, N.D. Cal. Dismissed without prejudice, November 7, 1967; amended complaint filed; judgment for defendant, March 27, 1969; no appeal.

Paul Unruh v. Wesley Lawrence Edwards, A-30584 (September 21, 1966)

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Utah Power & Light Co., 4 IBLA 62 (November 5, 1971)

Utah Power & Light Co. v. U.S., Civil No. C-5-72, D. Utah. Suit pending.

E. A. Vaughey, 63 I.D. 85 (1956)

E. A. Vaughey v. Fred A. Seaton, Civil No. 1744-56. Dismissed by stipulation, April 18, 1957; no appeal.

Burt A. Wackerli, et al., 73 I.D. 280 (1966)

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Actions consolidated. Judgment for defendant, plaintiff, & defendant, respectively, August 3, 1961; aff'd., 313 F. 2d 884 (1963); cert. denied, 373 U.S. 932 (1963).

William F. Klingensmith, Inc., IBCA-717-5-68, IBCA-734-10-68 (May 4, 1971)

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W. L. Ridge Construction Co., IBCA-80 (November 30, 1960)

W. L. Ridge v. U.S., Ct. Cl. No. 301-60. Suit dismissed, October 1, 1963.

Estate of Wook-Kah-Nah, Comanche Allottee No. 1927, 65 I.D. 436 (1958)

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ACCOUNTS
(See also Funds)

DISTRIBUTION OF RECEIPTS

The Secretary has authority under section 19 of the permanent Appropriations Repeal Act of June 26, 1934, as amended, to accept payment of revenues derived from oil shale leases covering lands within unpatented mining claims in accordance with a written agreement among the interested parties to place the money in a trust-fund account pending ultimate judicial determination of the respective rights of the parties, and, where provided for in the agreement and consented to by the lessee, to hold the revenues (1) for payment to the mining claimants upon issuance to them of patents if it should be determined that the mining claimants are entitled to the exclusive right of possession and enjoyment of the oil shale deposits and lands containing them, or (2) for transfer to the appropriate earned accounts if the mining claims are rules invalid.

Where revenues derived from oil shale leases covering lands within unpatented mining claims are accepted as payment in accordance with an escrow agreement to that effect among the interested parties, and it is ultimately determined that the mining claimants are entitled to the issuance of patents based upon their exclusive right of possession and enjoyment of the oil shale deposits and lands containing them, the Secretary would be required by section 204(a) of the Act of July 14, 1960, to pay the lease revenues to the mining claimants upon issuance to them of patents, where the agreement so provides and it is consented to by the lessee.

Competitive Leasing of Oil Shale Lands Covered by Unpatented Mining Claims, M-36839 (Oct. 28, 1971)

ACT OF FEBRUARY 23, 1887

The prohibition against contracts involving the employment of convict labor as contained in Executive Order 325a does not apply to those cooperative agreements entered into by the Bureau of Land Management and the several States which provide for emergency manpower assistance for the suppression of fires, even though, the States may rely in part upon trained convict crews for such emergency manpower reserves.

Use of State Convicts in BLM Fire-Suppression Work, M-36832 (Aug. 13, 1971) 78 I. D. 269

ACT OF APRIL 23, 1904

Until school sections which either "shall be granted" or "are hereby granted" to states from lands on Indian reservations have been surveyed, title does not pass from the United States to the state. Such school sections, while unsurveyed, remain subject to the Indians' historic right of occupancy until that occupancy is extinguished by the United States. If that right is never extinguished, it must still exist. So the United States continues to hold title

ACT OF APRIL 23, 1904--Continued

to such sections in trust for the Indians, and the Indians continue to enjoy their aboriginal right of occupancy in those sections under that trust.

Ownership of Unsurveyed School Lands Within the Flathead Indian Reservation, M-36827 (July 2, 1971)

ACT OF MARCH 1, 1907

The Secretary of the Interior may authorize that trust patents for the benefit of Mission Indians issue pursuant to the Act of March 1, 1907, after he has investigated and made a finding that such lands were in the occupancy and possession of such bands or villages of Indians since prior to March 1, 1907, that the lands to be patented were required and needed by such bands or villages of Mission Indians as of March 1, 1907, that the Indians have had a continuing need or use until the present for such lands, and that the lands are not subject to intervening rights which now preclude the issuance of such patents.

Authority to Issue Trust Patents for the Benefit of Certain Groups of Mission Indians of California Pursuant to the Act of March 1, 1907, for Parcels of Land Within the "Mission Reserve", M-36756 (Supp.) (Nov. 18, 1971)

ACT OF AUGUST 11, 1916

Where an irrigation district acting pursuant to the Smith Act of August 11, 1916, has enforced its lien against public land in an unpatented desert land entry and has sold the land at a tax sale, the rights of the entryman and his successors are terminated and the rights of the purchaser are determined by the Smith Act.

For the purpose of determining whether entered but unpatented land can be disposed of pursuant to section 6 of the Smith Act of August 11, 1916, the "irrigation works" referred to in that section are not those necessary on an individual entry to carry out irrigation but refer to facilities that serve the irrigation district in general, and "water of the district available for such land" means only that the entryman has a legally enforceable claim to available water even though access to it is barred by a Departmental regulation.

C. Arden Gingery, Michiko Shiota (Gingery), 2 IBLA 351 (June 23, 1971) 78 I.D. 218

ACT OF FEBRUARY 15, 1929

States which have assumed the requisite jurisdiction over Indian country under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. section 1162 and 28 U.S.C. section 1360) or under the Civil Rights Act of 1968 (Act of April 11, 1968, 82 Stat. 77-81, 25 U.S.C. sections 1321-1322 (Supp. V, 1965-1969)) are required by the Wholesome

ACT OF FEBRUARY 15, 1929--Continued

Meat Act of 1967 to enforce their meat inspection laws on Indian reservations if the enforcement does not involve the regulation of property held in trust by the United States for the benefit of the Indians. States which have not assumed the aforementioned jurisdiction over Indian country are not authorized or required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations unless the Secretary of the Interior were to enact regulations authorizing such enforcement under the authority granted him by the Act of February 15, 1929, 45 Stat. 1185, as amended, 25 U.S.C. section 231.

Applicability of the Wholesome Meat Act of 1967 on Indian Reservations, M-36811 (Feb. 1, 1971) 78 I.D. 18

ACT OF OCTOBER 17, 1940

One who acquires an interest in a desert land entry by purchase long after he entered military service cannot derive benefits from the Soldiers' and Sailors' Civil Relief Act of 1940 which are restricted to those who acquire their interest before entering military service and who file a notice of such entrance with the land office within six months of such entrance.

C. Arden Gingery, Michiko Shiota (Gingery), 2 IBLA 351 (June 23, 1971) 78 I.D. 218

ACT OF AUGUST 15, 1953

States which have assumed the requisite jurisdiction over Indian country under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. section 1162 and 28 U.S.C. section 1360) or under the Civil Rights Act of 1968 (Act of April 11, 1968, 82 Stat. 77-81, 25 U.S.C. sections 1321-1322 (Supp. V, 1965-1969)) are required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations if the enforcement does not involve the regulation of property held in trust by the United States for the benefit of the Indians. States which have not assumed the aforementioned jurisdiction over Indian country are not authorized or required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations unless the Secretary of the Interior were to enact regulations authorizing such enforcement under the authority granted him by the Act of February 15, 1929, 45 Stat. 1185, as amended, 25 U.S.C. section 231.

Applicability of the Wholesome Meat Act of 1967 on Indian Reservations, M-36811 (Feb. 1, 1971) 78 I.D. 18

The Winnebago Tribe has the power through its inherent right to govern itself and implied in its Constitution to create a tribal court to hear cases involving Indians who violate the tribal

ACT OF AUGUST 15, 1953--Continued

hunting and fishing laws. Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. sec. 1162 and 28 U.S.C. sec. 1360) does not derogate from this power in regard to hunting and fishing.

Power of the Winnebago Tribe to Create a Tribal Court to Hear Cases Involving Indians Who Violate Tribal Hunting and Fishing Laws, M-36821 (Mar. 19, 1971)

The financial responsibility law of the State of Washington applies to Indians involved in an automobile accident on a private road within the Yakima Indian Reservation. The state, in requiring the Indians to post bond under the authority of this law, is not assuming any jurisdiction over Indians on reservation lands greater than that permitted under RCW 37.12.010 or under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. sec. 1162 and 28 U.S.C. sec. 1360 (1964)).

Applicability of the Financial Responsibility Law of Washington to Indians on the Yakima Reservation, M-36829 (July 20, 1971)

ACT OF JULY 7, 1958

For the purposes of the Federal-Aid Highway Act of 1958, 23 U.S.C. sec. 120 (Supp. V. 1969)those lands selected by the State of Alaska pursuant to the Alaska Statehood Act of 1958 (72 Stat. 339) remain public lands until such time as a final patent has been issued to the State.

Distribution of Funds for Federal Aid-Highways Based on Area of Lands in Federal Ownership in Alaska, M-36834 (Aug. 27, 1971)

ACT OF AUGUST 27, 1958

For purposes of the Federal-Aid Highway Act of 1958, 23 U.S.C. sec. 120 (Supp. V. 1969) those lands selected by the State of Alaska pursuant to the Alaska Statehood Act of 1958 (72 Stat. 339) remain public lands until such time as a final patent has been issued to the State.

Distribution of Funds for Federal Aid-Highways Based on Area of Lands in Federal Ownership in Alaska, M-36834 (Aug. 27, 1971)

ACT OF JULY 6, 1960

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 act for that purpose.

Masonic Homes of California, 4 IBLA 23 (Oct. 27, 1971) 78 I.D. 312

ACT OF JUNE 3, 1966

Reservoir right-of-way applications are properly rejected where the lands applied for are within public land surveyed meander lines of the Great Salt Lake and have been conveyed to the State of Utah by the United States in accordance with the Act of June 3, 1966, and they will not be suspended to await possible reversion of the land to the United States if certain contingencies prescribed by the act should transpire.

William J. Colman, 3 IBLA 322 (Oct. 8, 1971)

ACT OF DECEMBER 15, 1967

The Secretary of Agriculture is not authorized or required to conduct meat inspection programs on Indian reservations under the provisions of the Wholesome Meat Act of 1967, 81 Stat. 584, 21 U.S.C. sections 601-691 (Supp. V, 1965-1969).

States which have assumed the requisite jurisdiction over Indian country under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. section 1162 and 28 U.S.C. section 1360) or under the Civil Rights Act of 1968 (Act of April 11, 1968, 82 Stat. 77-81, 25 U.S.C. sections 1321-1322 (Supp. V, 1965-1969)) are required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations if the enforcement does not involve the regulation of property held in trust by the United States for the benefit of the Indians. States which have not assumed the aforementioned jurisdiction over Indian country are not authorized or required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations unless the Secretary of the Interior were to enact regulations authorizing such enforcement under the authority granted him by the Act of February 15, 1929, 45 Stat. 1185, as amended, 25 U.S.C. section 231.

Applicability of the Wholesome Meat Act of 1967 on Indian Reservations, M-36811 (Feb. 1, 1971) 78 I.D. 18

ACT OF AUGUST 8, 1968

Under the Act of August 8, 1968, 82 Stat. 663, which allows resale to "former owners," both Indian and non-Indian, of lands located on the Pine Ridge Indian Reservation that were taken by the United States in 1942 for use as an aerial gunnery range but have now been declared excess to the needs of the Department of the Air Force, it was contemplated that only natural persons would qualify under the act's definition of "former owners." A county of South Dakota is not a "former owner" within the meaning of that act. In addition, South Dakota's own statutes contain no authorization for boards of county commissioners to purchase land, except to condemn private property for public purposes.

Application of Shannon County, South Dakota, To Purchase Lands Within The Pine Ridge Aerial Gunnery Range, Pursuant to the Act of August 8, 1968, 82 Stat. 663, M-36817 (Jan. 12, 1971)

ACT OF JANUARY 1, 1970

An applicant for a prospecting permit to explore for copper and other hardrock minerals is properly required to agree to certain stipulations as a condition precedent to the issuance of the permit when there is no showing that the requirements are unreasonable, arbitrary, or unduly onerous, and where those stipulations conform to the Department's obligations under the National Environmental Policy Act of 1969.

J. D. Archer, Elizabeth B. Archer, 2 IBLA 303 (May 26, 1971) 78 I.D. 189

ADMINISTRATIVE PRACTICE

The procedures followed by the Department of the Interior in the initiation, prosecution, hearing and administrative decision of mining contests are in full compliance with the Administrative Procedure Act and its requirements of separation of function in decision making and do not deny due process.

United States of America v. Herbert H. Mullin, Pearl F. Mullin, C. A. Gussman, 2 IBLA 133 (Apr. 7, 1971)

The Director of the Bureau of Land Management, upon review of the evidence relied on by a grazing district manager as justification for a proposed reallocation of grazing privileges among licensed users within the district, may properly determine that the reallocation should be held in abeyance pending further study, even though a licensee or permittee who appeals from the district manager's decision setting forth the terms of the proposed reallocation is unable to show that the reallocation is inconsistent with principles of sound range management or that it would create hardships constituting such a serious impairment to the licensee's livestock operation as to give him valid grounds for objecting to the proposal.

Soulen Livestock Company et al., 2 IBLA 207 (Apr. 23, 1971) 78 I.D. 144

A land office practice if in contravention of an applicable regulation cannot create any rights in an applicant who tenders a personal check designated "MONEY ORDER" and is not afforded the benefits of such practice.

James W. McDade, 2 IBLA 373 (June 23, 1971)

The ruling in Tagala v. Gorsuch, 411 F.2d 589 (9th Cir. 1969), that the regulation reciting an appeal "will be subject to summary dismissal" when the statement of reasons for the appeal is not timely filed permits the exercise of discretion, does not apply to the regulation requiring timely filing of an answer to a contest complaint, as the language of the latter regulation is mandatory.

United States v. Ray L. Pruett & Freida C. Pruett, 3 IBLA 23 (July 15, 1971)

ADMINISTRATIVE PRACTICE--Continued

Where the mineral interest of the United States in lands described in a noncompetitive oil and gas lease offer for acquired lands proves to be larger or smaller than the interest stated, the rentals payable by the lessee shall be increased or decreased proportionately. If the federal mineral interest is larger than the stated interest and the advance rental is deficient by more than 10 percent, the lease will not issue. However, if the deficiency is remedied by payment of the additional rental and no offers are filed in the interim, the offer earns priority from the date the deficiency is remedied.

Irwin Rubenstein, 3 IBLA 250 (Sept. 21, 1971)

Where an applicant for a prospecting permit does not personally submit a statement of citizenship and acreage holdings in his own name, his power of attorney must specifically authorize and empower his attorney-in-fact to make such statement or to execute all statements which may be required under the regulations.

A departmental regulation promulgated pursuant to statutory authority has the force and effect of law. An application which does not comply with the clear and unequivocal requirements of the regulations must be rejected.

Frank Allison, 3 IBLA 317
(October 8, 1971)

Where an assertion is made that unauthorized uses of public lands are being made, such an assertion, even if true, cannot vest in an applicant any right not authorized by law.

Leroy Martin, 4 IBLA 160 (Dec. 17, 1971)

The Board of Land Appeals is not limited in its consideration of an appeal to the particular questions raised in that appeal, and may exercise, by virtue of the delegation to it by the Secretary, all the authority of the Secretary with respect to the case on appeal.

Mrs. Hazel Ingersoll Hall, 4 IBLA 177 (Dec. 23, 1971)

Mining claims located on lands purchased by the United States under the Act of April 8, 1935, 49 Stat. 115, and added to the Kaniksu National Forest by the Act of August 10, 1939, 53 Stat. 1347, may not be declared null and void ab initio, but the mining claimants must be afforded notice and an opportunity for hearing before the claims are subject to cancellation.

Ernest Smith, Ruth Smith, 4 IBLA 192 (Dec. 27, 1971) 78 I.D. 368

ADMINISTRATIVE PROCEDURE ACT

GENERALLY

The Board of Land Appeals has authority to reverse the fact findings of a hearing examiner even when not clearly erroneous. However, where the resolution of a case depends primarily upon his findings of credibility, which in turn are based upon his reaction to the demeanor of the witnesses, and such findings are supported by substantial evidence, they will not be disturbed by the Board.

State Director for Utah v. Edgar Dunham, 3 IBLA 155 (Aug. 31, 1971) 78 I.D. 272

ADMINISTRATIVE PROCEDURE ACT--Continued

GENERALLY--Continued

ADJUDICATION

The procedures followed by the Department of the Interior in the initiation, prosecution, hearing and administrative decision of mining contests are in full compliance with the administrative Procedure Act and its requirements of separation of function in decision making and do not deny due process.

United States of America v. Herbert H. Mullin, Pearl F. Mullin, C. A. Gussman, 2 IBLA 133 (Apr. 7, 1971)

BURDEN OF PROOF

Government mineral examiners determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the government's prima facie case.

In a government mining contest, where the contestant has made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimant, and he cannot secure a determination that the claim is valid merely by attempting to discredit and impeach the government's witnesses.

United States v. Wayne Winters d/b/a Piedras Del Sol Mining Company, 2 IBLA 329 (June 2, 1971) 78 I.D. 193

Government mineral examiners determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the government's prima facie case.

The sole basis for decision in a contest case is the record made at the hearing, although evidence submitted on appeal can be considered for the purpose of determining whether a further hearing is warranted; but in the absence of substantial proof tending to show the existence of a valid discovery on the claims there is no basis for further evidentiary proceedings.

United States v. Jimmie (Juanita) P. Laing, 3 IBLA 108 (Aug. 19, 1971)

ADMINISTRATIVE PROCEDURE ACT--Continued

HEARINGS

Mining claims located on lands purchased by the United States under the Act of April 8, 1935, 49 Stat. 115, and added to the Kaniksu National Forest by the Act of August 10, 1939, 53 Stat. 1347, may not be declared null and void ab initio, but the mining claimants must be afforded notice and an opportunity for hearing before the claims are subject to cancellation.

Ernest Smith, Ruth Smith, 4 IBLA 192 (Dec. 27, 1971) 78 I.D. 368

PUBLIC INFORMATION

After the opening of bids for oil and gas leases on offshore tracts, the withholding, under 5 U.S.C. sec. 552(b), (4), (5), or (9), of estimates of the value of the tracts made by the Government and used by it in acting upon the bids received is not warranted, even though confidential information consisting of geological and geophysical information and data concerning wells furnished by lessees of the Government were taken into account in arriving at the estimates.
See M-36779 dated November 17, 1969.

Appeal of Amoco Production Company (Formerly Pan American Petroleum Corporation), Availability of Information, M-36841 (Nov. 9, 1971)

ALASKA

GRAZING

Settlement on land in Alaska which is subject to a grazing lease issued under the Alaska Grazing Act of March 4, 1927, 48 U.S.C. §§ 471, 471a-471o (1958) does not create any rights, by virtue of such settlement, under the Alaska Native Allotment Act, 48 U.S.C. §§ 357, 357a, 357b (1958), since such land is segregated from adverse appropriation at least until the Department takes action to cancel the grazing lease.

Although the existence of a grazing lease, issued under the Act of March 4, 1927, 48 U.S.C. §§ 471, 471a-471o (1958) is effective to bar settlement of the land covered thereby, it does not preclude the filing of a State selection application for the land, which, when filed, segregates the land from all appropriations based upon application or settlement or location.

Harold J. Naughton, 3 IBLA 237 (Sept. 13, 1971) 78 I.D. 300

HOMESTEADS

A protest submitted by an entryman, whose entry has been canceled as a result of a contest, against the final proof filed by the successful contestee will be dismissed when the protestant's court action against the contestee and the Secretary is dismissed.

Edna V. Frank, 1 IBLA 220 (Jan. 13, 1971)

ALASKA--Continued

INDIAN AND NATIVE AFFAIRS

No rights are acquired under the Alaska Native Allotment Act, 48 U.S.C. §§ 357, 357a, 357b (1958) by a native who purportedly commenced his occupation of the land at a time when the land was withdrawn from all forms of appropriation and where after the withdrawal was revoked, the land was opened only for the filing of State selection applications.

Harold J. Naughton, 3 IBLA 237 (Sept. 13, 1971) 78 I.D. 300

Where an application for a native allotment under the Act of May 17, 1906, as amended, describes land, which at the time of filing is included in a State of Alaska selection application that had been tentatively approved to the State, and alleges occupancy from a date prior to the filing of the state selection, and where evidence of the applicant's occupancy has not been developed, the rejection of the allotment application is properly set aside and the case remanded for further investigation of the alleged occupancy.

Lucy S. Ahvakana, State of Alaska, 3 IBLA 341 (Oct. 22, 1971)

LAND GRANTS AND SELECTIONS

No rights are acquired under the Alaska Native Allotment Act, 48 U.S.C. §§ 357, 357a, 357b (1958) by a native who purportedly commenced his occupation of the land at a time when the land was withdrawn from all forms of appropriation and where after the withdrawal was revoked, the land was opened only for the filing of State selection applications.

Although the existence of a grazing lease, issued under the Act of March 4, 1927, 48 U.S.C. §§ 471, 471a-471o (1958) is effective to bar settlement of the land covered thereby, it does not preclude the filing of a State selection application for the land, which, when filed, segregates the land from all appropriations based upon application or settlement or location.

Harold J. Naughton, 3 IBLA 237 (Sept. 13, 1971) 78 I.D. 300

Generally

For the purposes of the Federal-Aid Highway Act of 1958, 23 U.S.C. sec. 120 (Supp. V, 1969) those lands selected by the State of Alaska pursuant to the Alaska Statehood Act of 1958 (72 Stat. 339) remain public lands until such time as a final patent has been issued to the State.

Distribution of Funds for Federal Aid-Highways Based on Area of Lands in Federal Ownership in Alaska, M-36834 (Aug. 27, 1971)

Where an application for a native allotment under the Act of May 17, 1906, as amended, describes land, which at the time of filing is included in a State of Alaska selection application that had been tentatively approved to the State, and alleges occupancy from a date prior to the filing of

ALASKA--Continued

LAND GRANTS AND SELECTIONS--Continued

Generally--Continued

the state selection, and where evidence of the applicant's occupancy has not been developed, the rejection of the allotment application is properly set aside and the case remanded for further investigation of the alleged occupancy.

Lucy S. Ahvakana, State of Alaska, 3 IBLA 341 (Oct. 22, 1971)

NATIVE ALLOTMENTS

An application for an allotment under the Native Allotment Act of May 17, 1906, which on its enactment provided for the allotment of nonmineral lands, must be rejected where, prior to the alleged occupancy and use of the land, the land had been set apart by executive order as a naval petroleum reserve for oil or gas, and where, prior to the amendment of the Native Allotment Act authorizing the allotment of vacant, unappropriated and unreserved land in Alaska that may be valuable for coal, oil or gas deposits, all the lands within the naval petroleum reserve were and still are withdrawn by public land order from all forms of appropriation under the public land laws.

Elsie May Pikok Crow, 3 IBLA 114 (Aug. 20, 1971)

Lands within Naval Petroleum Reserve No. 4 in Alaska withdrawn from entry by Public Land Order No. 82 were expressly precluded from being opened to entry by Public Land Order No. 2215, which revoked Public Land Order No. 82; therefore, the withdrawal by Public Land Order No. 82 remains in effect as to such lands and precludes the allowance of native allotment applications for such lands unless the lands applied for were otherwise excepted from the withdrawal or unless rights had attached.

Where there has been no Governmental recognition of proprietary rights in lands occupied by Alaska natives, the United States may withdraw such lands from disposition under the public land laws, including the Alaska Native Allotment Act.

The strong Congressional policy of protecting the naval petroleum reserves compels the rejection of native allotment applications for lands within Naval Petroleum Reserve No. 4 in Alaska in the exercise of the Secretary of the Interior's discretion under the Alaska Native Allotment Act, regardless of whether asserted inchoate occupancy preference rights under that Act are deemed unaffected or precluded by the reserve and subsequent withdrawals.

Terza Hopson et al., 3 IBLA 134 (Aug. 20 1971)

An application for an allotment under the Native Allotment Act of May 17, 1906, which on its enactment provided for the allotment of nonmineral lands, must be rejected where, prior to the alleged occupancy and use of the land, the land had been set apart by executive

ALASKA--Continued

NATIVE ALLOTMENTS--Continued

order as a naval petroleum reserve for oil or gas, and where, prior to the amendment of the Native Allotment Act authorizing the allotment of vacant, unappropriated and unreserved land in Alaska that may be valuable for coal, oil or gas deposits, all the lands within the naval petroleum reserve were and still are withdrawn by public land order from all forms of appropriation under the public land laws.

Lester Suvlu, 3 IBLA 125 (Aug. 20, 1971)

A native allotment application is properly rejected because the lands have been patented to the State of Alaska under a state selection, even though the applicant alleges continuous use and occupancy of the lands since a date preceding the filing of and patenting of the state selection.

Clarence March, 3 IBLA 261 (Sept. 23, 1971)

OIL AND GAS LEASES

A noncompetitive oil and gas lease offer filed for unleased lands in Alaska before January 19, 1969, is properly suspended from further adjudication under the provisions of Public Land Order 4582, as extended by PLO 4962 and PLO 5081, and will not be rejected until determination of the availability of the land to such noncompetitive oil and gas lease offer is finally made after expiration of the Public Land Order, unless the offer is recalled previously by the offeror.

George E. Utermohle, Jr., 3 IBLA 94 (Aug. 13, 1971)

POSSESSORY RIGHTS

A protest submitted by an entryman, whose entry has been canceled as a result of a contest, against the final proof filed by the successful contestee will be dismissed when the protestant's court action against the contestee and the Secretary is dismissed.

Edna V. Frank, 1 IBLA 220 (Jan. 13, 1971)

STATEHOOD ACT

For the purposes of the Federal-Aid Highway Act of 1958, 23 U.S.C. sec. 120 (Supp. V. 1969) those lands selected by the State of Alaska pursuant the Alaska Statehood Act of 1958 (72 Stat. 339) remain public lands until such time as a final patent has been issued to the State.

Distribution of Funds for Federal Aid-Highways Based on Area of Lands in Federal Ownership in Alaska, M-36834 (Aug. 27, 1971)

Although the existence of a grazing lease, issued under the Act of March 4, 1927, 48 U.S.C. §§ 471, 471a-471o (1958) is effective to bar settlement of the land covered thereby, it does not preclude the filing

ALASKA--Continued

STATEHOOD ACT--Continued

of a State selection application for the land, which, when filed, segregates the land from all appropriations based upon application or settlement or location.

Harold J. Naughton, 3 IBLA 237 (Sept. 13, 1971) 78 I. D. 300

TRADE AND MANUFACTURING SITES

An application by a corporation to purchase a trade and manufacturing site is properly rejected where the applicant indicates only that a small plywood building is used for the company's office and a portion of the land has been cleared and used for storage without showing that the company was actually engaged in a trade, manufacture, or other productive industry, and that the land has been possessed and occupied and is needed for such an enterprise; that the corporate name suggests that it is in the power industry is not sufficient to establish such a showing.

Kenai Power Corporation, 2 IBLA 56 (Mar. 12, 1971)

A trade and manufacturing site purchase application is properly rejected where the applicant fails to show an adequate business operation on the site.

Jay Frederick Cornell, 4 IBLA 11 (Oct 26, 1971)

APPEALS

(See also Contracts, Federal Coal Mine Health and Safety Act of 1969, Grazing Permits and Licenses, Indian Probate, Indian Tribes, Rules of Practice)

Where the transmittal of an appeal to the Board of Land Appeals is accompanied by the recommendation of the State Director that the decision be vacated because it was premised on a nonprejudicial error made by the appellant in completing his application form, and where the Board determines that the error is indeed remediable, the decision may be vacated, the appeal dismissed, and the case remanded.

John H. Rutherford, 2 IBLA 446 (June 11, 1971)

APPLICATIONS AND ENTRIES

GENERALLY

A noncompetitive oil and gas lease offer filed for unleased lands in Alaska before January 19, 1969, is properly suspended from further adjudication under the provisions of Public Land Order 4582, as extended by PLO 4962 and PLO 5081, and will not be rejected until determination of the availability of the land to such noncompetitive oil and gas lease offer is finally made after expiration of the Public Land Order, unless the offer is recalled previously by the offeror.

George E. Utermohle, Jr., 3 IBLA 94 (Aug. 13, 1971)

Where the mineral interest of the United States in lands described in a noncompetitive oil and gas lease offer for acquired lands proves to be larger or smaller than the interest stated, the rentals payable by the lessee shall be increased or decreased proportionately.

APPLICATIONS AND ENTRIES--Continued

GENERALLY--Continued

If the federal mineral interest is larger than the stated interest and the advance rental is deficient by more than 10 percent, the lease will not issue. However, if the deficiency is remedied by payment of the additional rental and no offers are filed in the interim, the offer earns priority from the date the deficiency is remedied.

Irwin Rubenstein, 3 IBLA 250 (Sept. 21, 1971)

Where an applicant for a prospecting permit does not personally submit a statement of citizenship and acreage holdings in his own name, his power of attorney must specifically authorize and empower his attorney-in-fact to make such statement or to execute all statements which may be required under the regulations.

A departmental regulation promulgated pursuant to statutory authority has the force and effect of law. An application which does not comply with the clear and unequivocal requirements of the regulations must be rejected.

Frank Allison, 3 IBLA 317 (Oct. 8, 1971)

Reservoir right-of-way applications are properly rejected where the lands applied for are within public land surveyed meander lines of the Great Salt Lake and have been conveyed to the State of Utah by the United States in accordance with the Act of June 3, 1966, and they will not be suspended to await possible reversion of the land to the United States if certain contingencies prescribed by the act should transpire.

William J. Colman, 3 IBLA 322 (Oct. 8, 1971)

Where an assertion is made that unauthorized uses of public lands are being made, such an assertion, even if true, cannot vest in an applicant any right not authorized by law.

Leroy Martin, 4 IBLA 160 (Dec. 17, 1971)

ATTORNEYS

Where an applicant for a prospecting permit does not personally submit a statement of citizenship and acreage holdings in his own name, his power of attorney must specifically authorize and empower his attorney-in-fact to make such statement or to execute all statements which may be required under the regulations.

Frank Allison, 3 IBLA 317 (Oct. 8, 1971)

BOUNDARIES

(See also Surveys of Public Lands)

In surveying a boundary line created by a metes and bounds description in a private conveyance of land, calls to landmarks or monuments are pre-eminent, calls to boundaries are of secondary importance, calls of courses will prevail over calls of distances, and the recital of the quantity or area of land conveyed will be least influential.

In the performance of a dependent resurvey in order to find a boundary line described by metes and bounds, the grant boundary

BOUNDARIES--Continued

method of distributing any error along the entire length of the line cannot be utilized where the apportionment depends on locating and fixing the terminus of the line by accepting one record distance call and allowing that distance to control the alteration of all of the other courses and distances recited in the record description of the boundary.

The Coast Indian Community 3 IBLA 285 (Oct. 5, 1971)

BUREAU OF LAND MANAGEMENT

The Director of the Bureau of Land Management, upon review of the evidence relied on by a grazing district manager as justification for a proposed reallocation of grazing privileges among licensed users within the district, may properly determine that the reallocation should be held in abeyance pending further study, even though a licensee or permittee who appeals from the district manager's decision setting forth the terms of the proposed reallocation is unable to show that the reallocation is inconsistent with principles of sound range management or that it would create hardships constituting such a serious impairment to the licensee's livestock operation as to give him valid grounds for objecting to the proposal.

Soulen Livestock Company et al., 2 IBLA 207 (Apr. 23, 1971) 78 I.D. 144

CLASSIFICATION OF MULTIPLE USE ACT LANDS

Publication in the Federal Register of a notice of a proposed classification under the Classification and Multiple Use Act will segregate the lands described from other forms of disposal, including appropriation under the mining laws, unless the proposed classification specifically provides that the lands shall remain open for certain forms of disposal, and failure to publish a similar notice in a newspaper having general circulation in the area of the land involved does not negate the segregative effect of the Federal Register publication.

Mining claims purportedly located after the land has been segregated from appropriation under the mining law by notice of proposed classification under the Classification and Multiple Use Act published in the Federal Register, but before a similar notice is published in an area newspaper, are null and void ab initio, the Federal Register publication having effected a segregation of the land.

H. E. Baldwin and John R. Keeling, 3 IBLA 71 (July 30, 1971)

COLOR OR CLAIM OF TITLE

GENERALLY

An application to purchase public land under the Color of Title Act is properly rejected when the applicant is unable to show possession under some claim or color of title derived from some source other than the United States and where the claim was initiated while the land was withdrawn as part of a national forest.

Nina R. B. Levinson and Clare R. Sigfrid, 1 IBLA 252 (Feb. 2, 1971) 78 I.D. 30

Where the applicant's holding of land under the Color of Title Act is neither good faith, peaceful, adverse possession, nor for the statutory period of 20 years, the application must be rejected.

Jacob Dykstra, 2 IBLA 177 (Apr. 22, 1971)

GOOD FAITH

Where the applicant's holding of land under the Color of Title Act is neither good faith, peaceful, adverse possession, nor for the statutory period of 20 years, the application must be rejected.

The 20-year period of good faith adverse possession required to qualify an applicant under Class I of the Color of Title Act must immediately precede the date on which the applicant first learned of the defect in his title, and he may not rely on the good faith possession of remote predecessors in his chain of title despite the bad faith of his immediate predecessors. The chain of good faith possession, once interrupted, must begin anew.

Jacob Dykstra, 2 IBLA 177 (Apr. 22, 1971)

CONTRACTS

(See also Rules of Practice)

CONSTRUCTION AND OPERATION

Actions of Parties

A building contractor could not avoid the effect of its execution of a change order fixing the amount of an equitable adjustment upon the ground of duress where there was no evidence the contractor's financial exigency was attributable to acts of the Government and no evidence of coercive acts by Government personnel.

Where a contractor submitted invoices for sums claimed to be due for changes and subsequently executed change orders for amounts less than the invoices, its claims for the difference between the amounts invoiced and the amounts fixed in the change orders were barred by accord and satisfaction.

Where the contract contained a provision that approval of shop drawings shall not relieve the contractor of any part of its obligation to conform to the requirements of the contract, the Government's approval of shop drawings differing from the drawings and specifications did not effect a change to the contract. Accordingly, the contracting officer's order that the contrac-

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Actions of Parties--Continued

or comply with the drawings and specifications did not entitle the contractor to additional compensation.

Appeal of E. E. Steinlicht, 1BCA-834-4-70 (Mar. 12, 1971)

A contractor under a contract to construct a river pumping plant who encountered flowing water and silt and caving conditions which required him to employ different methods of excavation and dewatering than anticipated and who thereafter negotiated and unqualifiedly accepted a change order intended to compensate him for such conditions pursuant to the Differing Site Conditions clause, is barred by such acceptance from sustaining a claim thereafter filed for the increased cost of handling mud and silt flowing into the excavation resulting from the same differing site condition.

Appeal of Okland Construction Company Inc., 1BCA-871-9-70 (Mar. 23, 1971)

A ship construction contractor's claim for an equitable adjustment based on the contention that a deficiency notice involving the tack welding of certain bulkheads to the second deck imposed welding standards beyond the requirements of the contract and thus constituted a constructive change is denied where the evidence reflects (i) that there was a substantial basis for the issuance of the deficiency; (ii) the contractor's interpretation of the deficiency was unreasonable; and (iii) the claimed increased costs were not proved to result from the deficiency.

A ship construction contractor's claim for an equitable adjustment based on the contention that the issuance of deficiency notices involving the installation of nameplates and labels was improper and forced the contractor to incur extra costs in negotiating the resolution of invalid deficiencies was denied because there was no evidence the contractor performed extra work or incurred increased costs because of the deficiencies. The Board upheld the contracting officer's decision reducing the contract price because the contractor was relieved of the necessity of installing certain nameplates.

Appeal of South Portland Engine Company, Inc., 1BCA-807-10-69 (May 7, 1971)

Where the parties to a dispute before the Board agree upon a third party inspection and the Board orders such inspection, controlling weight shall be given the unchallenged report of the third party inspector.

Appeal of LeRoy Smith d/b/a Smith Reforestation, 1BCA-821-1-70 (July 7, 1971)

Appeal of R. J. Smith, 1BCA-823-1-70 (July 7, 1971)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions

Appellant's allegation that the subsurface was composed of solid caliche without included gravel, even if taken as true, does not support a claim based on a differing site condition (changed condition) of the first category when the contract indicated that a large part of the subsurface was composed of caliche, most of which was described as hard, and which was not shown as including gravel.

The failure of the contractor to give timely notice to the Government of an alleged differing site condition will bar a claim for an equitable adjustment based upon the alleged differing site condition, when the available evidence shows that the failure to give notice was prejudicial to the Government.

Appeal of Clark F. Cass and Walt Alloway, Joint Venturers, IBCA-813-11-69 (Feb. 16, 1971)

A contractor under a contract to construct a river pumping plant who encountered flowing water and silt and caving conditions which required him to employ different methods of excavation and dewatering than anticipated and who thereafter negotiated and unqualifiedly accepted a change order intended to compensate him for such conditions pursuant to the Differing Site Conditions clause, is barred by such acceptance from sustaining a claim thereafter filed for the increased cost of handling mud and silt flowing into the excavation resulting from the same differing site condition.

The degree of incline of an access road furnished by the Government prior to the notice to proceed for a contractor's use in constructing a river pumping plant which apparently met the specifications, does not constitute a differing site condition since it is neither subsurface nor latent and the contractor offered no proof that a grade of 16 percent is unusual and differed materially from that ordinarily encountered in such work.

Appeal of Okland Construction Company, Inc., IBCA-871-9-70 (Mar. 23, 1971)

A claim for a first category changed condition is denied where a quick condition actually encountered in excavating for concrete drains did not differ materially from what the contractor could reasonably have expected to encounter from site examination and the contract indications of subsurface conditions.

Even though appellant pleaded both a first and a second category changed condition, the Board decides the claim as a first category changed condition only since the contract contains accurate and sufficient indications of the subsurface conditions to be encountered citing as support therefor recent Court of Claims decisions.

Appeal of John M. Keltch, Inc., IBCA-830-3-70 (June 22, 1971) 78 I.D. 208

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changed Conditions--Continued

A dredging contractor's claim based upon the non-availability of a spoil area and asserted under the Changes and Differing Site Conditions clauses is denied where the Board finds the contract does not indicate the specific terms upon which the spoil area will be made available and the contractor has failed to even allege with particularity the assurances purportedly received from representatives of both the Government and the private landowner prior to bidding with respect to the spoil area in question.

Appeal of West Coast Dredging, Inc., IBCA-906-6-71 (Nov. 26, 1971) 78 I. D. 338

A claim for a changed condition will be denied when the contractor fails to present adequate evidence as to what the field conditions were and fails to prove that the field conditions differed materially from conditions shown in the contract documents.

A changed condition claim will be denied where the contractor fails to show significant error in the data contained in the contract documents.

A claim for a changed condition will be denied when the evidence shows that the overwet condition of borrow material intended for use as compacted earthdam fill was most likely the result of the use of too much water in wetting the borrow material prior to excavation.

A claim for a changed condition based upon overwet borrow material will be denied when the contract expressly recognizes the possibility of overwetting the material and states that the contractor must cover the contingent risk of overwet material in his unit bid prices.

Appeal of S. S. Mullen Construction, Inc., IBCA-860-7-70 (Dec. 28, 1971) 78 I.D. 372

Changes and Extras

Where a contractor submitted invoices for sums claimed to be due for changes and subsequently executed change orders for amounts less than the invoices, its claims for the difference between the amounts invoiced and the amounts fixed in the change orders were barred by accord and satisfaction.

The contractor's execution of a change order did not operate as an accord and satisfaction as to matters not contemplated therein.

The Board determined that the contractor was entitled to be compensated for the installation of blocking for fiberboard panels which was required by neither the drawings nor the specifications where the evidence belied the Government's contention that the blocking was such a basic element of good construction practice that it was not shown by architects in their drawings. The contractor was also entitled to compensation for the installation of access doors shown on neither the drawings nor specifications where there was no evidence the doors were required by any applicable building code.

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

Even though a contractor's interpretation of an ambiguous note on a drawing concerning venetian blinds was arguably reasonable, its claim to be compensated for the installation of venetian blinds was denied where the evidence reflected the contractor was aware of the ambiguity and failed to inquire of the contracting officer.

Where the contract contained a provision that approval of shop drawings shall not relieve the contractor of any part of its obligation to conform to the requirements of the contract, the Government's approval of shop drawings differing from the drawings and specifications did not effect a change to the contract. Accordingly, the contracting officer's order that the contractor comply with the drawings and specifications did not entitle the contractor to additional compensation.

Where a drawing expressly stated that precast finish concrete does not get sack finish, the Government could not require sack finish of precast concrete panels and columns upon the ground that sacking was necessary in order to obtain a satisfactory finish without compensating the contractor therefor.

Appeal of E. E. Steinlicht, IBCA-834-4-70 (Mar. 12, 1971)

A ship construction contractor's claim for an equitable adjustment based on the contention that a deficiency notice involving the tack welding of certain bulkheads to the second deck imposed welding standards beyond the requirements of the contract and thus constituted a constructive change is denied where the evidence reflects (i) that there was a substantial basis for the issuance of the deficiency; (ii) the contractor's interpretation of the deficiency was unreasonable; and (iii) the claimed increased costs were not proved to result from the deficiency.

A ship construction contractor's claim for an equitable adjustment based on the contention that the issuance of deficiency notices involving the installation of nameplates and labels was improper and forced the contractor to incur extra costs in negotiating the resolution of invalid deficiencies was denied because there was no evidence the contractor performed extra work or incurred increased costs because of the deficiencies. The Board upheld the contracting officer's decision reducing the contract price because the contractor was relieved of the necessity of installing certain nameplates.

Appeal of South Portland Engine Company, Inc., IBCA-807-10-69 (May 7, 1971)

A contractor is not entitled to additional compensation beyond the contract price specified in a supply

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Changes and Extras--Continued

contract for fabricating a cryostat, for correcting nonconforming material in tubing lines pursuant to the Inspection clause of the contract.

Appeal of Cryogenic Associates, Inc., IBCA-861-7-70 (June 29, 1971)

Absent a showing that a project inspector has been given greater authority than included in an express delegation, actions clearly outside the delegation will not be recognized as binding on the Government.

Appeal of F. H. Antrim Construction Co., Inc., IBCA-882-12-70 (July 28, 1971) 78 I.D. 265

A claim for an equitable adjustment under the Changes clause to reflect the cost of installing an automatic fire prevention sprinkler system during construction of a building is denied where the contract specifications clearly called for such a system and were complementary to the drawings under the contract provision which states that anything shown in one and not in the other will be of like effect as if shown on both.

Appeal of Mattefs Construction Company, IBCA-870-9-70 (Aug. 18, 1971)

A dredging contractor's claim based upon the nonavailability of a spoil area and asserted under the Changes and Differing Site Conditions clauses is denied where the Board finds the contract does not indicate the specific terms upon which the spoil area will be made available and the contractor has failed to even allege with particularity the assurances purportedly received from representatives of both the Government and the private landowner prior to bidding with respect to the spoil area in question.

Appeal of West Coast Dredging, Inc., IBCA -906-6-71 (Nov. 26, 1971) 78 I.D. 338

Where a Bureau of Land Management timber sale contract required the purchaser to rock a designated road under certain specifications, in the absence of a "change" clause in the contract, Bureau personnel could not unilaterally require the purchaser to rock another road instead; nevertheless, the parties could agree to a modification of the original contract.

Parker Industries, Inc., 4 IBLA 117 (Nov. 30, 1971)

Conflicting Clauses

Where a contract for the construction and landscaping of a playground area contained an error in the quantity listing of a particularly described tree, and that error is discoverable by reference to any one of three other quantity requirements for the

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Conflicting Clauses--Continued

same type tree, on the same drawing, the discrepancy was so patent as to require inquiry of the contracting officer.

Appeals of William F. Klingensmith, Inc., IBCA-717-5-68 and IBCA-734-10-68 (May 4, 1971)

Construction against Drafter

Even though a contractor's interpretation of an ambiguous note on a drawing concerning venetian blinds was arguably reasonable, its claim to be compensated for the installation of venetian blinds was denied where the evidence reflected the contractor was aware of the ambiguity and failed to inquire of the contracting officer.

Appeal of E. E. Steinlicht, IBCA-834-4-70 (Mar. 12, 1971)

Where a contract provision is ambiguous or vague and the Government is the drafter, the Board is required as a matter of law to give effect to the contractor's reasonable interpretation of the provision.

Appeal of John M. Keltch, Inc., IBCA-831-3-70 (June 21, 1971)

Drawings and Specifications

The Board determined that the contractor was entitled to be compensated for the installation of blocking for fiberboard panels which was required by neither the drawings nor the specifications where the evidence belied the Government's contention that the blocking was such a basic element of good construction practice that it was not shown by architects in their drawings. The contractor was also entitled to compensation for the installation of access doors shown on neither the drawings nor specifications where there was no evidence the doors were required by any applicable building code.

Even though a contractor's interpretation of an ambiguous note on a drawing concerning venetian blinds was arguably reasonable, its claim to be compensated for the installation of venetian blinds was denied where the evidence reflected the contractor was aware of the ambiguity and failed to inquire of the contracting officer.

Where the contract contained a provision that approval of shop drawings shall not relieve the contractor of any part of its obligation to conform to the requirements of the contract, the Government's approval of shop drawings differing from the drawings and specifications did not effect a change to the contract. Accordingly, the contracting officer's order that the contractor comply with the drawings and specifications did not entitle the contractor to additional compensation.

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Drawings and Specifications--Continued

Where a drawing expressly stated that precast finish concrete does not get sack finish, the Government could not require sack finish of precast concrete panels and columns upon the ground that sacking was necessary in order to obtain a satisfactory finish without compensating the contractor therefor.

Appeal of E. E. Steinlicht, IBCA-834-4-70 (Mar. 12, 1971)

Where a contract for the construction and landscaping of a playground area contained an error in the quantity listing of a particularly described tree, and that error is discoverable by reference to any one of three other quantity requirements for the same type tree, on the same drawing, the discrepancy was so patent as to require inquiry of the contracting officer.

Appeals of William F. Klingensmith, Inc., IBCA-717-5-68 and IBCA-734-10-68 (May 4, 1971)

A ship construction contractor's claim for an equitable adjustment based on the contention that a deficiency notice involving the tack welding of certain bulkheads to the second deck imposed welding standards beyond the requirements of the contract and thus constituted a constructive change is denied where the evidence reflects (i) that there was a substantial basis for the issuance of the deficiency; (ii) the contractor's interpretation of the deficiency was unreasonable; and (iii) the claimed increased costs were not proved to result from the deficiency.

A ship construction contractor's claim for an equitable adjustment based on the contention that the issuance of deficiency notices involving the installation of nameplates and labels was improper and forced the contractor to incur extra costs in negotiating the resolution of invalid deficiencies was denied because there was no evidence the contractor performed extra work or incurred increased costs because of the deficiencies. The Board upheld the contracting officer's decision reducing the contract price because the contractor was relieved of the necessity of installing certain nameplates.

Appeal of South Portland Engine Company, Inc., IBCA-807-10-69 (May 7, 1971)

A claim for an equitable adjustment under the Changes clause to reflect the cost of installing an automatic fire prevention sprinkler system during construction of a building is denied where the contract specifications clearly called for such a system and were complementary to the drawings under the contract provision which states that anything shown in one and not in the other will be of like effect as if shown on both.

Appeal of Mattefs Construction Company, IBCA-870-9-70 (Aug. 18, 1971)

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Intent of Parties

The contractor's execution of a change order did not operate as an accord and satisfaction as to matters not contemplated therein.

Appeal of E. E. Steinlicht, IBCA-834-4-70 (Mar. 12, 1971)

Modification of Contracts

A building contractor could not avoid the effect of its execution of a change order fixing the amount of an equitable adjustment upon the ground of duress where there was no evidence the contractor's financial exigency was attributable to acts of the Government and no evidence of coercive acts by Government personnel.

Where a contractor submitted invoices for sums claimed to be due for changes and subsequently executed change orders for amounts less than the invoices, its claims for the difference between the amounts invoiced and the amounts fixed in the change orders were barred by accord and satisfaction.

Appeal of E. E. Steinlicht, IBCA-834-4-70 (Mar. 12, 1971)

Where a Bureau of Land Management timber sale contract required the purchaser to rock a designated road under certain specifications, in the absence of a "change" clause in the contract, Bureau personnel could not unilaterally require the purchaser to rock another road instead; nevertheless, the parties could agree to a modification of the original contract.

Parker Industries, Inc., 4 IBLA 117 (Nov. 30, 1971)

Notices

The failure of the contractor to give timely notice to the Government of an alleged differing site condition will bar a claim for an equitable adjustment based upon the alleged differing site condition, when the available evidence shows that the failure to give notice was prejudicial to the Government.

Appeal of Clark F. Cass and Walt Alloway, Joint Venturers, IBCA-813-11-69 (Feb. 16, 1971)

Where appellant's claim for excavation was presented over five years after the work was done and two years after completion of the contract, the Government's motion to dismiss for failure to give timely notice of the claim was denied on the present state of the record in the absence of a clear showing of prejudice to the Government.

Appeal of Ets-Hokin Corporation, IBCA-842-6-70 (Mar. 1, 1971) 78 I.D. 53

CONTRACTS--Continued

CONSTRUCTION AND OPERATION--Continued

Payments

Appellant's claim that the Government wrongfully deducted prompt payments discounts is denied where the available evidence indicates that payment was made within the discount period.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

Third Persons

A dredging contractor's claim based upon the non-availability of a spoil area and asserted under the Changes and Differing Site Conditions clauses is denied where the Board finds the contract does not indicate the specific terms upon which the spoil area will be made available and the contractor has failed to even allege with particularity the assurances purportedly received from representatives of both the Government and the private landowner prior to bidding with respect to the spoil area in question.

Appeal of West Coast Dredging, Inc., IBCA-906-6-71 (Nov. 26, 1971) 78 I.D. 338

Warranties

Notwithstanding the Government's contention that the maintenance warranty in the instant contract was far more comprehensive than the usual warranty against defective material and workmanship, the Board determined that the burden was on the Government to prove by a preponderance of the evidence that the warranty had been breached. Appellant's burden of proving matters relied upon as a defense to breach of warranty, could arise only after the Government had established that the warranty had in fact been breached.

Appeal of R. H. Fulton, Contractor, IBCA-769-3-69 (Feb. 2, 1971)

DISPUTES AND REMEDIES

Generally

A timber sale contract will be considered as modified by the Bureau of Land Management and the purchaser thereunder where the record produced at a hearing provides a reasonable basis for finding that the parties agreed to a substituted change in the road rocking obligations of the purchaser; however, the purchaser will not be found to be in default under the modified terms of the contract if the record fails to substantiate the Bureau's charge that the purchaser breached its obligations.

Parker Industries, Inc., 4 IBLA 117 (Nov. 30, 1971)

Appeals

Notwithstanding the Government's contention that the maintenance warranty in the instant contract

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Appeals--Continued

was far more comprehensive than the usual warranty against defective material and workmanship, the Board determined that the burden was on the Government to prove by a preponderance of the evidence that the warranty had been breached. Appellant's burden of proving matters relied upon as a defense to breach of warranty, could arise only after the Government had established that the warranty had in fact been breached.

Appeal of R. H. Fulton, Contractor, IBCA-769-3-69 (Feb. 2, 1971)

Burden of Proof

Notwithstanding the Government's contention that the maintenance warranty in the instant contract was far more comprehensive than the usual warranty against defective material and workmanship, the Board determined that the burden was on the Government to prove by a preponderance of the evidence that the warranty had been breached. Appellant's burden of proving matters relied upon as a defense to breach of warranty, could arise only after the Government had established that the warranty had in fact been breached.

Appeal of R. H. Fulton, Contractor, IBCA-769-3-69 (Feb. 2, 1971)

A claim based upon a differing site condition of the first category will be denied where the appellant's evidence is insufficient to establish what the subsurface conditions actually were.

Appeal of Clark F. Cass and Walt Alloway, Joint Venturers, IBCA-813-11-69 (Feb. 16, 1971)

A claim for a time extension because of alleged deficient design will be denied when appellant fails to prove by any substantial evidence the allegation of design deficiency.

Appellant's claim that the project was substantially complete by a certain date is denied where no proof has been submitted that the project road was capable of adequately serving its intended use as of that date.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

The contracting officer's decision to terminate for default that part of a contract pertaining to landscaping work during performance of a contract which called for playground construction, will not be set aside where there is a lack of proof that failure to timely satisfactorily complete the planting phase of the contract, particularly the replacement of unacceptable plants, was within the criteria of excusability prescribed by paragraph (d) of the Termination for Default--Damages for

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Burden of Proof--Continued

Delay--Time Extensions provision of the contract, clause 5 of the General Provisions.

Appeals of William F. Klingensmith, Inc., IBCA-717-5-68 and IBCA-734-10-68 (May 4, 1971)

A dredging contractor's claim based upon the non-availability of a spoil area and asserted under the Changes and Differing Site Conditions clauses is denied where the Board finds the contract does not indicate the specific terms upon which the soil area will be made available and the contractor has failed to even allege with particularity the assurances purportedly received from representatives of both the Government and the private landowner prior to bidding with respect to the spoil area in question.

Appeal of West Coast Dredging, Inc., IBCA-906-6-71 (Nov. 26, 1971) 78 I. D. 338

A claim for a changed condition will be denied when the contractor fails to present adequate evidence as to what the field conditions were, and fails to prove that the field conditions differed materially from conditions shown in the contract documents.

A changed condition claim will be denied where the contractor fails to show significant error in the data contained in the contract documents.

Appeal of S. S. Mullen Construction, Inc., IBCA-860-7-70 (Dec. 28, 1971) 78 I. D. 372

Damages

Actual Damages

Under the special provisions of Bureau of Land Management Form 1510-19, the Government is found to be responsible for the cost of repair of a starter motor on a caterpillar tractor when the evidence indicates that the tractor was in the custody of the Government when the damage occurred.

Appeal of Al Renk & Sons, Inc., IBCA-828-3-70 (Feb. 3, 1971)

Equitable Adjustments

A contractor is not entitled to additional compensation beyond the contract price specified in a supply contract for fabricating a cryostat, for correcting nonconforming material in tubing lines pursuant to the Inspection clause of the contract.

Appeal of Cryogenic Associates, Inc., IBCA-861-7-70 (June 29, 1971)

A claim for an equitable adjustment under the Changes clause to reflect the cost of installing an automatic fire prevention sprinkler system during construction of a building is denied where the contract specifications clearly called for such a system and were

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Equitable Adjustments--Continued

complementary to the drawings under the contract provision which states that anything shown in one and not in the other will be of like effect as if shown on both.

Appeal of Mattefs Construction Company, IBCA-870-9-70 (Aug. 18, 1971)

Jurisdiction

Where a contract with a County requires the Government to build a replacement road and bridge in connection with land acquired for the construction of the Auburn Dam and Reservoir and the County complains (i) that in planning for and constructing the replacement road and bridge the Government had failed to adhere to standards proscribed in the contract and (ii) that it had failed to secure the County's approval for access from the replacement road to adjacent Government-owned land acquired for recreational purposes in violation of the contractual provision requiring approval of all accesses granted outside of the project takeline, the appeal is dismissed since the Board found (i) that the contract contained no contract provisions under which the wrongs alleged could be remedied and (ii) that the Disputes clause itself was not sufficient to confer jurisdiction. In reaching this conclusion the Board noted that dismissal of the appeal on jurisdictional grounds was proper, even though neither party had raised any question as to the Board's jurisdiction over the claims asserted.

Allegations by a County for which a replacement road was being built that the contracting officer had acted in an arbitrary manner and that its future course of action was to some extent dependent upon the result of the Board's review of the County's complaints, warrants Board examination of the complaints in detail even though it concludes on jurisdictional grounds that it has no authority to finally pass upon the claims asserted.

Appeal of Placer County, California, IBCA-777-5-69 (Apr. 8, 1971) 78 I. D. 113

Claims of a construction contractor for additional compensation because of increased costs of performance resulting from alleged interference of the project inspector and alleged delay by the Government in vacating certain buildings are based on breaches of contract, which are outside the jurisdiction of the Board to determine administratively.

Appeal of F. H. Antrim Construction Co., Inc., IBCA-882-12-70 (July 28, 1971) 78 I. D. 265

CONTRACTS--Continued

DISPUTES AND REMEDIES--Continued

Substantial Evidence

A claim based upon a differing site condition of the first category will be denied where the appellant's evidence is insufficient to establish what the subsurface conditions actually were.

Appeal of Clark F. Cass and Walt Alloway, Joint Venturers, IBCA-813-11-69 (Feb. 16, 1971)

A claim for a time extension because of alleged deficient design will be denied when appellant fails to prove by any substantial evidence the allegation of design deficiency.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

A claim for a changed condition will be denied when the contractor fails to present adequate evidence as to what the field conditions were, and fails to prove that the field conditions differed materially from conditions shown in the contract documents.

A changed condition claim will be denied where the contractor fails to show significant error in the data contained in the contract documents.

Appeal of S. S. Mullen Construction, Inc., IBCA-860-7-70 (Dec. 28, 1971) 78 I. D. 372

Termination for Default

The contracting officer's decision to terminate for default that part of a contract pertaining to landscaping work during performance of a contract which called for playground construction, will not be set aside where there is a lack of proof that failure to timely satisfactorily complete the planting phase of the contract, particularly the replacement of unacceptable plants, was within the criteria of excusability prescribed by paragraph (d) of the Termination for Default--Damages for Delay--Time Extensions provision of the contract, clause 5 of the General Provisions.

Appeals of William F. Klingensmith, Inc., IBCA-717-5-68 and IBCA-734-10-68 (May 4, 1971)

FORMATION AND VALIDITY

Authority to Make

Absent a showing that a project inspector has been given greater authority than included in an express delegation, actions clearly outside the delegation will not be recognized as binding on the Government.

Appeal of F. H. Antrim Construction Co., Inc., IBCA-882-12-70 (July 28, 1971) 78 I. D. 265

CONTRACTS--Continued

PERFORMANCE OR DEFAULT

Generally

A timber sale contract will be considered as modified by the Bureau of Land Management and the purchaser thereunder where the record produced at a hearing provides a reasonable basis for finding that the parties agreed to a substituted change in the road rocking obligations of the purchaser; however, the purchaser will not be found to be in default under the modified terms of the contract if the record fails to substantiate the Bureau's charge that the purchaser breached its obligations.

Parker Industries, Inc., 4 IBLA 117 (Nov. 30, 1971)

Excusable Delays

The contractor is awarded 11 days of time extension for unusually severe weather on a road building project based on evidentiary admissions in contracting officer's statements which established an unrebutted presumption of liability.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

Inspection

A contractor is not entitled to additional compensation beyond the contract price specified in a supply contract for fabricating a cryostat, for correcting nonconforming material in tubing lines pursuant to the Inspection clause of the contract.

Appeal of Cryogenic Associates, Inc., IBCA-861-7-70 (June 29, 1971)

In a dispute challenging the inspection and acceptance criteria and the inspection results, the inspection reports are presumed to be proper absent any evidence to the contrary.

Appeal of LeRoy Smith d/b/a Smith Reforestation, IBCA-821-1-70 (July 7, 1971)

Appeal of R. J. Smith, IBCA-823-1-70 (July 7, 1971)

Release and Settlement

A contractor under a contract to construct a river pumping plant who encountered flowing water and silt and caving conditions which required him to employ different methods of excavation and dewatering than anticipated and who thereafter negotiated and unqualifiedly accepted a change order intended to compensate him for such conditions pursuant to the Differing Site Conditions clause, is barred by such acceptance from sustaining a claim thereafter filed for the increased cost of handling mud and silt flowing into the excavation resulting from the same differing site condition.

Appeal of Okland Construction Company, IBCA-871-9-70 (Mar. 23, 1971)

CONTRACTS--Continued

PERFORMANCE OR DEFAULT--Continued

Substantial Performance

Appellant's claim that the project was substantially complete by a certain date is denied where no proof has been submitted that the project road was capable of adequately serving its intended use as of that date.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

CONVEYANCES

GENERALLY

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 act for that purpose.

Masonic Homes of California, 4 IBLA 23 (Oct. 27, 1971) 78 I.D.312

INTEREST CONVEYED

A federal grant of land to a State for the purpose of validating the State's purported conveyance of such land to a third party does not vitiate federal ownership of the land where the United States has received a deed to the land from the assignee of the State's grantee. Under California law, where a person purports to convey the fee simple to certain land and subsequently acquires title to the land so conveyed, the after-acquired estate inures to the benefit of the original grantee or his successors in interest.

Roger L. Morehart, 4 IBLA 1 (Oct. 26, 1971) 78 I.D. 307

RESERVATIONS AND EXCEPTIONS

An acquired lands oil and gas lease offer filed July 1, 1966, is properly rejected as being prematurely filed, where oil and gas rights in the acquired lands were reserved in the grantor "for a primary period ending July 1, 1966," as that provision is interpreted as reserving those rights in the grantor until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

Georgette B. Lee, 1 IBLA 263 (Feb. 15, 1971)

COOPERATIVE AGREEMENTS

The prohibition against contracts involving the employment of convict labor as contained in Executive Order 325a does not apply to those cooperative agreements entered into by the Bureau of Land Management and the several States which provide for emergency man power assistance for the suppression of fires, even though, the States may rely in part upon trained convict crews for such emergency manpower reserves.

Use of State Convicts in BLM Fire-Suppression Work, M-36832 (Aug. 13, 1971) 78 I.D. 269

DESERT LAND ENTRY

GENERALLY

Where an irrigation district acting pursuant to the Smith Act of August 11, 1916, has enforced its lien against public land in an unpatented desert land entry and has sold the land at a tax sale, the rights of the entryman and his successors are terminated and the rights of the purchaser are determined by the Smith Act.

Land within a desert land entry included in an irrigation district does not become subject to a later reclamation withdrawal so long as the entry subsists.

For the purpose of determining whether entered but unpatented land can be disposed of pursuant to section 6 of the Smith Act of August 11, 1916, the "irrigation works" referred to in that section are not those necessary on an individual entry to carry out irrigation but refer to facilities that serve the irrigation district in general, and "water of the district available for such land" means only that the entryman has a legally enforceable claim to available water even though access to it is barred by a Departmental regulation.

C. ARDEN GINGERY, MICHIKO SHIOTA (GINGERY), 2 IBLA 351 (June 23, 1971) 78 I.D. 218

A hearing will not be granted in conection with a desert land entry application where the applicant fails to allege facts which, if proved, would entitle him to favorable consideration of his application.

Leroy Martin, 4 IBLA 160 (Dec. 17, 1971)

APPLICATIONS

Applications for desert land entry are properly held for rejection because the applicants' proposed plan of irrigation is not economically feasible.

Richard Platt et al., 2 IBLA 60 (Mar. 22, 1971)

Land within a first form reclamation withdrawal is not subject to desert land entry; therefore, applications to enter the withdrawn land must be rejected, regardless of the applicants' objections to the withdrawal.

Juanice H. McCain et al., 4 IBLA 188 (Dec. 27, 1971)

LANDS SUBJECT TO

Public lands which are withdrawn by a power site classification are not subject to appropriation under the desert land laws.

Leroy Martin, 4 IBLA 160 (Dec. 17, 1971)

DESERT LAND ENTRY--Continued

LANDS SUBJECT TO --Continued

Land within a first form reclamation withdrawal is not subject to desert land entry; therefore, applications to enter the withdrawn land must be rejected, regardless of the applicants' objections to the withdrawal.

Juanice H. McCain et al., 4 IBLA 188 (Dec. 27, 1971)

RELIEF ACTS

One who has acquired his interest in a desert land entry by purchase in 1949 cannot purchase the entry under the provisions of the act of March 4, 1929, which authorizes purchases only by an assignee under an assignment made prior to March 4, 1929.

C. Arden Gingery, Michiko Shiota (Gingery), 2 IBLA 351 (June 23, 1971) 78 I. D. 218

SUSPENSIONS

Since the suspension of desert land entries under the policy announced in Maggie L. Havens, A-5580 (October 11, 1923), was subject to termination whenever the Secretary found good reason to do so, the Secretary is authorized, when he determines that there is no public purpose to be served by continuing the suspension of entries suspended for almost 50 years, to terminate the suspension without notice or hearing and to restore the entries to the condition they were in on the date of the suspension.

Where part of a desert land entry suspended under the policy announced in Maggie L. Havens, A-5580 (October 11, 1923), has been held by the United States under lease for use by the Department of the Navy for purposes which make it impossible for the entryman to reclaim the entry, the termination of the Havens suspension while the land remains under lease should not work to the detriment of the entryman and the entry is to remain suspended until it is determined that the United States' occupation has ceased or is no longer an obstacle to reclamation.

C. Arden Gingery, Michiko Shiota (Gingery), 2 IBLA 351 (June 23, 1971) 78 I. D. 218

ENVIRONMENTAL POLICY ACT OF 1969
(See also National Environmental Policy Act of 1969)

An application for a hard rock prospecting permit for acquired lands within an experimental watershed in a national forest is properly rejected where the Forest Service refuses to consent to allowance of the application because of possible adverse effects to the watershed, and its reasons are consistent with the purposes for which the lands were acquired and with the ecological factors expressed in the National Environmental Policy Act of 1969.

Henry N. Gerritsen and John Xanthos, 3 IBLA 90 (Aug. 9, 1971)

ENVIRONMENTAL POLICY ACT OF 1969--Continued

It is proper to require one making an oil and gas lease offer to consent to stipulations deemed necessary to protect the land and surface resources from undue damage by exploratory operations, as a condition precedent to issuance of the lease, pursuant to the mandate of the Congress expressed in the National Environmental Policy Act of 1969.

John Oakason, 3 IBLA 148 (Aug. 26, 1971)

It is proper to require one making an oil and gas lease offer to consent to stipulations deemed necessary to protect the land and surface resources from undue damage by exploratory operations, as a condition precedent to issuance of the lease, pursuant to the mandate of the Congress expressed in the National Environmental Policy Act of 1969.

Quantex Corporation et al., 4 IBLA 31 (Oct. 28, 1971) 78 I.D. 317

EQUITABLE ADJUDICATION

GENERALLY

When a homestead entry has been canceled for failure to submit timely final proof and reinstatement has been denied and it appears that there are mitigating circumstances for failure to file timely final proof, the entry will be reinstated and the case remanded for further consideration in accordance with equitable adjudication.

Juanita J. Anderson, 4 IBLA 170 (Dec. 23, 1971)

EXCUSABLE NEGLECT

When a homestead entry has been canceled for failure to submit timely final proof and reinstatement has been denied and it appears that there are mitigating circumstances for failure to file timely final proof, the entry will be reinstated and the case remanded for further consideration in accordance with equitable adjudication.

Juanita J. Anderson, 4 IBLA 170 (Dec. 23, 1971)

SUBSTANTIAL COMPLIANCE

Equitable adjudication is not available to a homestead entryman in the absence of substantial compliance with the requirements of the homestead laws.

United States v. Russell G. Wells, (May 10, 1971) 2 IBLA 247 78 I. D. 163

EXCHANGES OF LAND
(See also Indian Lands, Private Exchanges)

FOREST EXCHANGES

Where a State has received title to a school indemnity selection, the base land for which the indemnity is taken remains in federal ownership and where, after the State has received such indemnity land, it issues an instrument of conveyance for the base land to private party A, who conveys it to B, who conveys it to the United States as base for a forest lieu selection, which is satisfied and thereafter the United States issues an indemnity clear list to the State for the

EXCHANGES OF LAND--Continued

FOREST EXCHANGES--Continued

school land in place to validate the State's purported conveyance to A, the title to the school land in place inures to the United States under the doctrine of after-acquired title.

Roger L. Morehart, 4 IBLA 1 (Oct. 26, 1971) 78 I.D. 307

EXECUTIVE ORDERS AND PROCLAMATIONS

The prohibition against contracts involving the employment of convict labor as contained in Executive Order 325a does not apply to those cooperative agreements entered into by the Bureau of Land Management and the several States which provide for emergency manpower assistance for the suppression of fires, even though, the States may rely in part upon trained convict crews for such emergency manpower reserves.

Use of State Convicts in BLM Fire-Suppression Work, M-36832 (Aug. 13, 1971) 78 I.D. 269

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969

GENERALLY

A party may withdraw a pleading at any stage of a proceeding without prejudice.

Trace Fork Coal Company, Mine No. 4
1 IBMA 68 (June 25, 1971)

ADVISORY COMMITTEES

Members of the Secretary's Advisory Committee on Coal Mine Safety Research who are officers or employees of a State government are entitled to reimbursement for travel, subsistence, and related expenses pursuant to subsection (d) of section 102 of the Federal Coal Mine Health and Safety Act of 1969.

Federal Coal Mine Health and Safety Act of 1969, M-36819 (Feb. 1, 1971)

ENTITLEMENT OF MINERS

Compensation

A withdrawal order issued for imminent danger, subsequent to voluntary withdrawal by the operator, is a proper basis of a claim for compensation under section 110(a) of the Act.

The only questions appropriate for decision under section 110(a) are those relating to compensation due under the order as issued and evidence of unwarrantable failure is inadmissible in a compensation case based upon an order issued for imminent danger.

Although only the miners are parties to an application for compensation proceeding, the miners may be represented by a person or organization

ENTITLEMENT OF MINERS--Continued

Compensation--Continued

designated by the miners as a representative acting on their behalf.

United Mine Workers of America District # 31, 1 IBMA 31 (May 4, 1971) 78 I.D. 153

Procedure

A provision for public hearing in a compensation proceeding based upon a withdrawal order issued for imminent danger, and in the absence of a statutory mandate therefor, is a proper and reasonable exercise of the Secretary's responsibility to administer the Act.

United Mine Workers of America District # 31, 1 IBMA 31 (May 4, 1971) 78 I.D. 153

HEARINGS

Procedure

Rulings on requests for continuance are matters entirely within the Examiner's discretion and normally are not appropriate for review on interlocutory appeal.

Initial determination of the situs of a hearing generally rests in the discretion of the Office of Hearings and Appeals. Requests for transfer of situs are within the discretion of the Examiner. Review of requests for a transfer of situs by the Board of Mine Operations Appeals is appropriate only in cases of manifest abuse of discretion by the Examiner which would result in irreparable injury and which could not be corrected in the normal course of administrative proceedings.

United Mine Workers of America District # 31, 1 IBMA 31 (May 4, 1971) 78 I.D. 153

PENALTIES

Procedure of Assessment

A party may withdraw a pleading at any stage of a proceeding without prejudice.

Trace Fork Coal Company, Mine No. 4
1 IBMA 68 (June 25, 1971)

REVIEW OF NOTICES AND ORDERS

Where the Bureau finds that a violation charged in a a notice issued under section 104(b) or (i) of the Act is totally abated, an application to review such notice under section 105(a) is subject to dismissal.

Reliable Coal Corporation, 1 IBMA 50 (June 10, 1971) 78 I.D. 199

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969--Continued

REVIEW OF NOTICES AND ORDERS--Continued

The termination by the Bureau of an order issued under section 104 of the Act is not a proper basis for dismissal of an application for review of such order.

Zeigler Coal Corporatibn, 1 IBMA 71 (Dec. 20, 1971) 78 I. D. 362

FEDERAL EMPLOYEES AND OFFICERS

AUTHORITY TO BIND GOVERNMENT

Erroneous advice given by personnel of the Bureau of Land Management cannot confer a right not authorized by law.

Southwest Salt Company, 2 IBLA 81 (Mar. 24, 1971) 78 I. D. 82

Erroneous advice given by personnel of the Bureau of Land Management cannot confer a right not authorized by law.

H. E. Baldwin and John R. Keeling, 3 IBLA 71 (July 30, 1971)

FEDERAL METAL AND NONMETALLIC MINE SAFETY ACT

ADVISORY COMMITTEES

Members of the Secretary's Advisory Committee on Metal and Nonmetallic Mine Health and Safety Standards authorized per diem in lieu of substance by 30 U.S.C. sec. 726(b) (Supp. V 1965-1969) at rates authorized by 5 U.S.C. sec. 5703 (Supp. V 1965-1969) may be reimbursed for actual and necessary expenses not in excess of $40.

Federal Metal and Nonmetallic Mine Safety Act, M-36820 (Mar. 2, 1971)

FIRE SUPPRESSION

The prohibition against contracts involving the employment of convict labor as contained in Executive Order 325a does not apply to those cooperative agreements entered into by the Bureau of Land Management and the several States which provide for emergency manpower assistance for the suppression of fires, even though, the States may rely in part upon trained convict crews for such emergency manpower reserves.

Use of State Convicts in BLM Fire-Suppression Work, M-36832 (Aug. 13, 1971) 78 I. D. 269

GRAZING PERMITS AND LICENSES

GENERALLY

Where grazing privileges have been exercised in the past on the basis of an agreement whereby the use of private lands in one pasture has been exchanged for the use of federal lands in another, the agreement may properly be construed either as an exchange of the use of an area of land for the privilege of using another designated area of land for

GRAZING PERMITS AND LICENSES--Continued

GENERALLY--Continued

grazing or as an exchange of the use of the first area for the privilege of grazing a specified number of animals on the second.

David Abel et al., 2 IBLA 87 (Mar. 26, 1971) 78 I. D. 86

ADJUDICATION

Where a grazing allotment includes both private and federal range lands, the Bureau of Land Management may properly determine the grazing capacity of all of the lands in the allotment and require, as a condition to the issuance of a permit or license to graze the federal range, that the number of livestock using the private lands be limited to the recognized capacity of the lands.

David Abel et al., 2 IBLA 87 (Mar. 26, 1971) 78 I. D. 86

The applicability of regulation 43 CFR 4115.2-1 (e) (13) (i) precluding the right of a licensee or other user of the range to demand a readjudication of grazing privileges after they have been held for a period of three years is not limited to situations where an adjudication of the unit has been made as set out in 43 CFR 4110.0-5(r), but is also applicable where adjudications of licenses in the unit have been made over a long period of time on the basis of information available and not challenged by other licensees.

Delbert and George Allan, Eldon L. Smith et al., 2 IBLA 35 (Mar. 4, 1971) 78 I. D. 55

ADVISORY BOARDS

A determination by an advisory board not to act on an application regularly presented to it does not deprive the district manager of his authority to act upon the application.

Richard McKay, Eureka Ranch Company, 2 IBLA 1 (Feb. 26, 1971)

Where a proposed line dividing an area into spring/fall and summer use areas and the criterion on which it is based has been discussed many times before an advisory board, the district manager may use that line in allocating grazing privileges despite the fact that it has not been set out in an advisory board recommendation.

Max Tanner, Cross (X) Ranch, Warren Rasmussen, Ross Warburton, Appellants, Clarence A. Elquist, Intervenor, 2 IBLA 183 (Apr. 22, 1971) 78 I. D. 134

APPEALS

Where a grazing user fails to appeal from a decision awarding him grazing privileges within an individual allotment with a grazing capacity equal to his base property qualifications, he cannot appeal from a later decision reducing his

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

grazing privileges for the reason that the forage capacity of his allotment was originally erroneously computed, if he does not dispute the accuracy of the new computation.

The failure to appeal from a decision setting up an allotment does not deprive the grazing user of his right to appeal from a later decision reducing his grazing privileges by deleting a small area from his allotment, even though he does not dispute the propriety of the deletion.

Richard McKay, Eureka Ranch Company, 2 IBLA 1 (Feb. 26, 1971)

An appeal to the Director, Bureau of Land Management, from a decision of a hearing examiner which is received after the period set by the rules of procedure for grazing cases will not be dismissed solely for that reason, but the circumstances surrounding the appeal will be examined to determine whether in the exercise of discretion the late appeal should be accepted.

An appeal to the Director, Bureau of Land Management, from a decision of the hearing examiner which is mailed within the appeal period and received one day late will be accepted where there is no prejudice to the other parties and where the filing party derived no advantage from his tardiness.

The applicability of regulation 43 CFR 4115.2-1 (e) (13) (i) precluding the right of a licensee or other user of the range to demand a readjudication of grazing privileges after they have been held for a period of three years is not limited to situations where an adjudication of the unit has been made as set out in 43 CFR 4110.0-5(r), but is also applicable where adjudications of licenses in the unit have been made over a long period of time on the basis of information available and not challenged by other licensees.

Delbert and George Allan, Eldon L. Smith et al., 2 IBLA 35 (Mar. 4, 1971) 78 I. D. 55

An appeal to the Director from a decision of a hearing examiner which is received after the period set by the rules of procedure for grazing cases will not be dismissed solely for being late, but the circumstances surrounding the appeal will be examined to determine whether in the exercise of discretion the late appeal should be allowed.

Max Tanner, Cross (X) Ranch, Warren Rasmussen, Ross Warburton, Appellants, Clarence A. Elquist, Intervenor, 2 IBLA 183 (Apr. 22, 1971) 78 I. D. 134

The Director of the Bureau of Land Management, upon review of the evidence relied on by a grazing district manager as justification for a proposed reallocation of grazing privileges among licensed users within the district, may properly

GRAZING PERMITS AND LICENSES--Continued

APPEALS--Continued

determine that the reallocation should be held in abeyance pending further study, even though a licensee or permittee who appeals from the district manager's decision setting forth the terms of the proposed reallocation is unable to show that the reallocation is inconsistent with principles of sound range management or that it would create hardships constituting such a serious impairment to the licensee's livestock operation as to give him valid grounds for objecting to the proposal.

Soulen Livestock Company et al., 2 IBLA 207 (Apr. 23, 1971) 78 I. D. 144

Any applicant for a grazing license or permit who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

Beryl Shurtz, 4 IBLA 66 (Nov. 8, 1971)

APPORTIONMENT OF FEDERAL RANGE

A permittee or licensee has no right to any particular area of the Federal range under the Taylor Grazing Act or the Federal Range Code and, although historical use is a factor to be considered in the determination of grazing privileges, the selection of the particular area in which the range user may exercise his grazing privileges is a matter committed to the discretion of the Department.

Delbert and George Allan, Eldon L. Smith et al., 2 IBLA 35 (Mar. 4, 1971) 78 I. D. 55

Where an apportionment of grazing privileges is made among livestock operators upon the basis of past authorized use, as shown by the records of a state grazing district, and one of the operators denies that he exercised or was allocated the grazing privileges which the records indicate he exercised in a particular year, the case will be remanded for the development of further evidence relating to the allocation of grazing privileges in that year.

David Abel et al., 2 IBLA 87 (Mar. 26, 1971) 78 I. D. 86

A division of an area of federal range into separate allotments will be upheld where its implementation will not result in such hardship as to constitute a serious impairment of the allottee's livestock operation. Under such circumstances it is unnecessary to determine whether the allotment is so arbitrary or capricious as to render valueless an objecting allottee's privately owned land and improvements or to seriously endanger the possibility of his continuing in the livestock business.

Ball Brothers Sheep Company et al., 2 IBLA 166 (Apr. 12, 1971)

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE--Continued

Where the grazing capacity of the federal range has been greatly increased due to the efforts and expenditures of the licensee with the cooperation of the Bureau of Land Management, and the range is to be divided into separate allotments for that licensee and a group of others, it is proper to allocate the increased capacity to such a licensee apart from the allocation of grazing privileges based on natural forage, especially when the individual licensee suffers a greater reduction of his class 1 demand than do the others.

Where a proposed line dividing an area into spring/fall and summer use areas and the criterion on which it is based has been discussed many times before an advisory board, the district manager may use that line in allocating grazing privileges despite the fact that it has not been set out in an advisory board recommendation.

A permittee or licensee has no right to any particular portion of that Federal Range under the Taylor Grazing Act or the Federal Range Code and, although historical use is a factor to be considered in the determination of grazing privileges, the selection of the particular area in which the range user may exercise his privileges is a matter committed to the discretion of the Department.

Max Tanner, Cross (X) Ranch, Warren Rasmussen, Ross Warburton, Appellants, Clarence A. Elquist, Intervenor, 2 IBLA 183 (Apr. 22, 1971) 78 I. D. 134

The Director of the Bureau of Land Management, upon review of the evidence relied on by a grazing district manager as justification for a proposed reallocation of grazing privileges among licensed users within the district, may properly determine that the reallocation should be held in abeyance pending further study, even though a licensee or permittee who appeals from the district manager's decision setting forth the terms of the proposed reallocation is unable to show that the reallocation is inconsistent with principles of sound range management or that it would create hardships constituting such a serious impairment to the licensee's livestock operation as to give him valid grounds for objecting to the proposal.

Soulen Livestock Company et al., 2 IBLA 207 (Apr. 23, 1971) 78 I.D. 144

Past usage of federal range does not give a licensee a vested right to use a particular area of the range but is a factor to be considered in allocating grazing privileges for the federal range, and this Department has discretion to change areas and seasons of use when necessary for proper range administration.

A district manager's determination of the allocation of the area of use within a unit will be upheld where its implementation will not result in such hardship as to constitute a serious impairment of the livestock operation of a grazing user, and where the user is granted all the grazing privileges to which he is

GRAZING PERMITS AND LICENSES--Continued

APPORTIONMENT OF FEDERAL RANGE--Continued

entitled and is permitted to use them in the vicinity of his privately owned lands.

A licensee of the federal range who appeals from a district manager's determination of the area of use of his grazing privileges has the burden of proof to show by substantial evidence that his rights have been impaired by the Bureau action and that the decision was improper.

Joyce Livestock Company, 2 IBLA 322 (June 2, 1971)

CANCELLATION AND REDUCTIONS

Where the grazing privileges of one grazing user are in part reduced by a deletion of an area from his individual allotment on the ground that the area should have been allocated to another user when the allotments were set up the first user must be compensated for the lost grazing privileges.

Richard McKay, Eureka Ranch Company, 2 IBLA 1 (Feb. 26, 1971)

A revocation of the grazing privileges of a licensee to graze horses will be ordered where the Government establishes that on three separate occasions the licensee willfully permitted her horses to trespass upon federal range, both within and without her private allotment, and it is not feasible to fence a portion of the allotment so that her horses would be restrained.

Mrs. R. W. Hooper, 3 IBLA 330 (Oct. 20, 1971)

Where a grazing licensee committed eleven grazing violations during the period 1956-62 and six violations during 1967 and 1968, the six violations, although not found to be clearly willful or grossly negligent, constitute repeated trespasses for which a reduction in grazing privileges may be imposed and a 10% reduction for one year is justified.

John Gribble, 4 IBLA 134 (Dec. 3, 1971)

EXCHANGE OF USE

Where grazing privileges have been exercised in the past on the basis of an agreement whereby the use of private lands in one pasture has been exchanged for the use of federal lands in another, the agreement may properly be construed either as an exchange of the use of an area of land for the privilege of using another designated area of land for grazing or as an exchange of the use of the first area for the privilege of grazing a specified number of animals on the second.

David Abel et al., 2 IBLA 87 (Mar. 26, 1971) 78 I. D. 86

The district manager may in the exercise of his discretion refuse to allow an exchange of use of lands leased by a licensee in an area in which it has no grazing privileges for privileges in an area allotted to it.

Ball Brothers Sheep Company et al., 2 IBLA 166 (Apr. 12, 1971)

GRAZING PERMITS AND LICENSES--Continued

FEDERAL RANGE CODE

The provisions of the Federal Range Code dealing with protests to a decision of the district manager are satisfied if a person is notified of his right to protest from an initial decision; if however, that decision is changed as a result of another's protest, those dissatisfied with the amended decision do not have a further right to a protest hearing, but must take an appeal as the Range Code provides.

Max Tanner, Cross (X) Ranch, Warren Rasmussen, Ross Warburton, Appellants, Clarence A. Elquist, Intervenor, 2 IBLA 183 (Apr. 22, 1971) 78 I. D. 134

HEARINGS

A licensee of the federal range who appeals from a district manager's determination of the area of use of his grazing privileges has the burden of proof to show by substantial evidence that his rights have been impaired by the Bureau action and that the decision was improper.

Joyce Livestock Company, 2 IBLA 322 (June 2, 1971)

RANGE SURVEYS

Where a grazing allotment includes both private and federal range lands, the Bureau of Land Management may properly determine the grazing capacity of all of the lands in the allotment and require, as a condition to the issuance of a permit or license to graze the federal range, that the number of livestock using the private lands be limited to the recognized capacity of the lands.

A determination of the carrying capacity of a unit of range by the Bureau of Land Management will not be disturbed in the absence of positive evidence of error.

David Abel et al., 2 IBLA 87 (Mar. 26, 1971) 78 I. D. 86

TRESPASS

A grazing trespass will not be deemed clearly willful where the licensee's conduct in committing the trespass is consistent with his view of the date on which the range had been opened to grazing, and the evidence that he knew the correct date is not persuasive.

Lawrence F. Bradbury, 2 IBLA 116 (Apr. 5, 1971)

A grazing trespass will not be deemed clearly willful where two separate, almost simultaneous violations of short duration have occurred followed by an admittedly willful violation involving only one cow for one day.

State Director for Utah v. Edgar Dunham, 3 IBLA 155 (Aug. 31, 1971) 78 I. D. 272

A finding by a hearing examiner that a count of horses in trespass was conducted by qualified employees of the Bureau of Land Management in a manner calculated to reach

GRAZING PERMITS AND LICENSES--Continued

TRESPASS--Continued

an accurate result will not be disturbed even though the permittee offers evidence of another count performed by her representatives in a different manner at another time.

A revocation of the grazing privileges of a licensee to graze horses will be ordered where the Government establishes that on three separate occasions the licensee willfully permitted her horses to trespass upon federal range, both within and without her private allotment, and it is not feasible to fence a portion of the allotment so that her horses would be restrained.

Mrs. R. W. Hooper, 3 IBLA 330 (Oct. 20, 1971)

Where it has been determined that a grazing trespass on the Federal range, while not clearly willful or grossly negligent, is repeated, the regulation requires that the forage value shall be computed and assessed at $4 per animal unit month or twice the commercial rate if such amount is higher. When the commercial rate is $4, the assessment of damages at $8 per animal unit month for repeated trespasses will be affirmed.

Where a grazing licensee committed eleven grazing violations during the period 1956-62 and six violations during 1967 and 1968, the six violations, although not found to be clearly willful or grossly negligent, constitute repeated trespasses for which a reduction in grazing privileges may be imposed and a 10% reduction for one year is justified.

John Gribble, 4 IBLA 134 (Dec. 3, 1971)

HEARINGS

(See also Administrative Procedure Act, Federal Coal Mine Health and Safety Act of 1969, Federal Metal and Nonmetallic Mine Safety Act, Grazing Permits and Licenses, Indian Probate, Mining Claims, Rules of Practice, Surface Resources Act)

A hearing will not be granted in connection with a desert land entry application where the applicant fails to allege facts which, if proved, would entitle him to favorable consideration of his application.

Leroy Martin, 4 IBLA 160 (Dec. 17, 1971)

HOMESTEADS (ORDINARY)

(See also Reclamation Homesteads, Soldiers' Additional Homesteads)

GENERALLY

The oil and gas deposits underlying the right-of-way granted to a railroad company pursuant to the Acts of July 1, 1862, or July 2, 1864, remain in the United States, even though the lands traversed by the right-of-way were later patented pursuant to the general homestead laws without any specific reservation of the minerals.

George W. Zarak et al., Cardinal Petroleum Company, 4 IBLA 82 (Nov. 10, 1971)

HOMESTEADS (ORDINARY)--Continued

GENERALLY--Continued

When a homestead entry has been canceled for failure to submit timely final proof and reinstatement has been denied and it appears that there are mitigating circumstances for failure to file timely final proof, the entry will be reinstated and the case remsnded for further consideration in accordance with equitable adjudication.

Juanita J. Anderson, 4 IBLA 170 (Dec. 23, 1971)

CANCELLATION OF ENTRY

Where the house in which the entryman claims he maintained his residence is situated in a noncontiguous subdivision more than one-quarter of a mile from the nearest entered land, it is too far removed from the entry to show compliance with the residence requirements of the homestead law, and the entry is properly canceled.

United States v. Russell G. Wells, 2 IBLA 247 (May 10, 1971) 78 I. D. 163

When a homestead entry has been canceled for failure to submit timely finsl proof and reinstatement has been denied and it appears that there are mitigating circumstances for failure to file timely final proof, the entry will be reinstated and the case remanded for further consideration in accordance with equitable adjudication.

Juanita J. Anderson, 4 IBLA 170 (Dec. 23, 1971)

MILITARY SERVICE

The credit for military service which an heir of the original reclamation homestead entryman may use may be applied to both the obligation under the homestead law to cultivate and under the reclamation law to reclaim 1/4 of the irrigable area within three full irrigation seasons.

David H. Evans v. Ralph C. Little, 1 IBLA 269 (Feb. 19, 1971) 78 I. D. 47

RESIDENCE

Where the house in which the entryman claims he maintained his residence is situated in a noncontiguous subdivision more than one-quarter of a mile from the nearest entered land, it is too far removed from the entry to show compliance with the residence requirements of the homestead law, and the entry is properly canceled.

United States v. Russell G. Wells, 2 IBLA 247 (May 10 1971) 78 I. D. 163

SECOND ENTRY

The fact that a home on the entry collapsed under the weight of snow during the life of the entry does not of itself establish that the entryman abandoned his entry for matters beyond his control so as to make him eligible for a second entry.

Jan A. Wawrytko, 2 IBLA 78 (Mar. 23, 1971)

HOMESTEADS (ORDINARY)--Continued

SECOND ENTRY--Continued

The grant under the soldiers' additional homestead provision of 43 U.S.C. § 274 (1964) to soldiers who, under the homestead laws, "entered" a quantity of land less than 160 acres does not operate to create any rights under that section where the soldier, under the basic homestead laws, had made a homestead entry for 160 acres, even though such entry was subsequently canceled, and also made a later entry for 40 acres at a time when no law authorized the making of a "second" homestead entry.

E. L. Cord, 3 IBLA 11 (July 7, 1971)

INDIAN ALLOTMENTS ON PUBLIC DOMAIN

GENERALLY

Where there has been no Governmental recognition of proprietary rights in lands occupied by Alaska natives, the United States may withdraw such lands from disposition under the public land laws, including the Alaska Native Allotment Act.

The strong Congressional policy of protecting the naval petroleum reserves compels the rejection of native allotment applications for lands within Naval Petroleum Reserve No. 4 in Alaska in the exercise of the Secretary of the Interior's discretion under the Alaska Native Allotment Act, regardless of whether asserted inchoate occupancy preference rights under that Act are deemed unaffected or precluded by the reserve and subsequent withdrawals.

Terza Hopson et al., 3 IBLA 134 (Aug. 20, 1971)

LANDS SUBJECT TO

Lands in a national forest which are withdrawn for power site purposes are not subject to settlement, appropriation or disposition under the Indian allotment laws.

Donald E. Miller, 2 IBLA 309 (May 26, 1971)

Lands within Naval Petroleum Reserve No. 4 in Alaska withdrawn from entry by Public Land Order No. 82 were expressly precluded from being opened to entry by Public Land Order No. 2215, which revoked Public Land Order No. 82; therefore, the withdrawal by Public Land Order No. 82 remains in effect as to such lands and precludes the allowance of native allotment applications for such lands unless the lands applied for were otherwise excepted from the withdrawal or unless rights had attached.

Terza Hopson et al., 3 IBLA 134 (Aug. 20, 1971)

No rights are acquired under the Alaska Native Allotment Act, 48 U.S.C. §§ 357, 357a, 357b (1958) by a native who purportedly commenced his occupation of the land at a time when the land was withdrawn from all forms of appropriation and where after the withdrawal was revoked, the land was opened only for the filing of State selection applications.

Settlement on land in Alaska which is subject to a grazing lease issued under the Alaska

INDIAN ALLOTMENTS ON PUBLIC DOMAIN--Continued

LANDS SUBJECT TO--Continued

Grazing Act of March 4, 1927, 48 U.S.C. §§ 471, 471a-471o (1958) does not create any rights, by virtue of such settlement, under the Alaska Native Allotment Act, 48 U.S.C. §§ 357, 357a, 357b (1958), since such land is segregated from adverse appropriation at least until the Department takes action to cancel the grazing lease.

Harold J. Naughton, 3 IBLA 237 (Sept. 13, 1971) 78 I.D. 300

SETTLEMENT

No rights are acquired under the Alaska Native Allotment Act, 48 U.S.C. §§ 357, 357a, 357b (1958) by a native who purportedly commenced his occupation of the land at a time when the land was withdrawn from all forms of appropriation and where after the withdrawal was revoked, the land was opened only for the filing of State selection applications.

Settlement on land in Alaska which is subject to a grazing lease issued under the Alaska Grazing Act of March 4, 1927, 48 U.S.C. §§ 471, 471a-471o (1958) does not create any rights, by virtue of such settlement, under the Alaska Native Allotment Act, 48 U.S.C. §§ 357, 357a, 357b (1958), since such land is segregated from adverse appropriation at least until the Department takes action to cancel the grazing lease.

Harold J. Naughton, 3 IBLA 237 (Sept. 13, 1971) 78 I.D. 300

INDIAN LANDS
(See also Indian Probate)

GENERALLY

The Secretary of Agriculture is not authorized or required to conduct meat inspection programs on Indian reservations under the provisions of the Wholesome Meat Act of 1967, 81 Stat. 584, 21 U.S.C. sections 601-691 (Supp. V, 1965-1969).

States which have assumed the requisite jurisdiction over Indian country under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. section 1162 and 28 U.S.C. section 1360) or under the Civil Rights Act of 1968 (Act of April 11, 1968, 82 Stat. 77-81, 25 U.S.C. sections 1321-1322 (Supp. V, 1965-1969)) are required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations if the enforcement does not involve the regulation of property held in trust by the United States for the benefit of the Indians. States which have not assumed the aforementioned jurisdiction over Indian country are not authorized or required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations unless the Secretary of the Interior were to enact regulations authorizing such enforcement under

INDIAN LANDS--Continued

GENERALLY--Continued

the authority granted him by the Act of February 15, 1929, 45 Stat. 1185, as amended, 25 U.S.C. section 231.

Applicability of the Wholesome Meat Act of 1967 on Indian Reservations, M-36811 (Feb. 1, 1971) 78 I.D. 18

Because the Congress has never manifested an intent to diminish or dissolve the Puyallup Reservation, as its boundaries were established in 1873, such boundaries continue to exist for federal and tribal purposes. Therefore, the Puyallup Tribe possesses the exclusive right to fish on the Puyallup River within those 1873 boundaries; the State of Washington may not exercise any authority over Puyallup Indians fishing on the Puyallup River within those boundaries; and the state may not regulate other Indians fishing there, at least when such fishing by such Indians has been permitted by the Puyallup Tribe.

Status of the Puyallup Reservation in the State of Washington, M-36825 (March 26, 1971)

M-36825 (Supp.) (Aug. 11, 1971)

Utah game laws apply to non-Indians who hunt, even with the tribe's permission, on the Uintah and Ouray Indian Reservation. Thus, non-Indians cannot hunt on the reservation without procuring a state license, even though they may be licensed by the tribe to do so.

Criminal Jurisdiction of Utah Over Non-Indians Hunting on the Uintah and Ouray Reservation in Violation of State Law, M-36813 (Mar. 29, 1971) 78 I.D. 101

The financial responsibility law of the State of Washington applies to Indians involved in an automobile accident on a private road within the Yakima Indian Reservation. The state, in requiring the Indians to post bond under the authority of this law, is not assuming any jurisdiction over Indians on reservation lands greater than that permitted under RCW 37, 12.010 or under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. sec. 1162 and 28 U.S.C. sec. 1360 (1964)).

Applicability of the Financial Responsibility Law of Washington to Indians on the Yakima Reservation, M-36829 (July 20, 1971)

ABORIGINAL TITLE

Where there has been no Governmental recognition of proprietary rights in lands occupied by Alaska natives, the United States may withdraw such lands from disposition under the public land laws, including the Alaska Native Allotment Act.

Terza Hopson et al., 3 IBLA 134 (Aug. 20, 1971)

INDIAN LANDS--Continued

ACQUIRED LANDS

When a group of Indians constitutes an historic "tribe" or "organized band" within the meaning of section 19 of the Indian Reorganization Act, and if it did not vote to reject the provisions of the Indian Reorganization Act, then the United States may acquire land for it under section 5 of the Indian Reorganization Act, and it may thereafter organize under section 16 of the Indian Reorganization Act.

Organization of the Nooksack Indians Under the Reorganization Act, M-36833 (Aug. 13, 1971)

CEDED LANDS

Until school sections which either "shall be granted" or "are hereby granted" to states from lands on Indian reservations have been surveyed, title does not pass from the United States to the state. Such school sections, while unsurveyed, remain subject to the Indians' historic right of occupancy until that occupancy is extinguished by the United States. If that right is never extinguished, it must still exist. So the United States continues to hold title to such sections in trust for the Indians, and the Indians continue to enjoy their aboriginal right of occupancy in those sections under that trust.

Ownership of Unsurveyed School Lands Within the Flathead Indian Reservation, M-36827 (July 2, 1971)

HUNTING AND FISHING

The Winnebago Tribe has the power through its inherent right to govern itself and implied in its Constitution to create a tribal court to hear cases involving Indians who violate the tribal hunting and fishing laws. Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. sec. 1162 and 28 U.S.C. sec. 1360) does not derogate from this power in regard to hunting and fishing.

Power of the Winnebago Tribe to Create a Tribal Court to Hear Cases Involving Indians Who Violate Tribal Hunting and Fishing Laws, M-36821 (Mar. 19, 1971)

Because the Congress has never manifested an intent to diminish or dissolve the Puyallup Reservation, as its boundaries were established in 1873, such boundaries continue to exist for federal and tribal purposes. Therefore, the Puyallup Tribe possesses the exclusive right to fish on the Puyallup River within those 1873 boundaries; the State of Washington may not exercise any authority over Puyallup Indians fishing on the Puyallup River within those boundaries; and the state may not regulate other Indian fishing there, at least when such fishing by such Indians has been permitted by the Puyallup Tribe.

Status of the Puyallup Reservation in the State of Washington, M-36825 (Mar. 26, 1971)

INDIAN LANDS--Continued

HUNTING AND FISHING--Continued

Because the Congress has never manifested an intent to diminish or dissolve the Puyallup Reservation, as its boundaries were established in 1873, such boundaries continue to exist for federal and tribal purposes. Therefore, the Puyallup Tribe possesses the exclusive right to fish on the Puyallup River within those 1873 boundaries; the State of Washington may not exercise any authority over Puyallup Indians fishing on the Puyallup River within those boundaries; and the state may not regulate other Indians fishing there, at least when such fishing by such Indians has been permitted by the Puyallup Tribe.

Status of the Puyallup Reservation in the State of Washington, M-36825 (Supp.) (Aug. 11, 1971)

TRIBAL LANDS

Under the Act of August 8, 1968, 82 Stat. 663, which allows resale to "former owners," both Indian and non-Indian, of lands located on the Pine Ridge Indian Reservation that were taken by the United States in 1942 for use as an aerial gunnery range but have now been declared excess to the needs of the Department of the Air Force, it was contemplated that only natural persons would qualify under the act's definition of "former owners." A county of South Dakota is not a "former owner" within the meaning of that act. In addition, South Dakota's own statutes contain no authorization for boards of county commissioners to purchase land, except to condemn private property for public purposes.

Application of Shannon County, South Dakota, To Purchase Lands Within The Pine Ridge Aerial Gunnery Range, Pursuant to the Act of August 8, 1968, 82 Stat. 663, M-36817 (Jan. 12, 1971)

When a group of Indians constitutes an historic "tribe" or "organized band" within the meaning of section 19 of the Indian Reorganization Act, and if it did not vote to reject the provisions of the Indian Reorganization Act, then the United States may acquire land for it under section 5 of the Indian Reorganization Act, and it may thereafter organize under section 16 of the Indian Reorganization Act.

Organization of the Nooksack Indians Under the Reorganization Act, M-36833 (Aug. 13, 1971)

INDIAN PROBATE

ADMINISTRATIVE PROCEDURE ACT

Generally

Under the delegation of authority of the Secretary to the Director of the Office of Hearings and Appeals, 35 F.R. 12081 (July 28, 1970), a decision

INDIAN PROBATE--Continued

ADMINISTRATIVE PROCEDURE ACT--Continued

Generally--Continued

by the Board of Indian Appeals becomes a Departmental decision, and upon the issuance of such decision the parties have exhausted their administrative remedies.

Estate of Julius Benter, 1 IBIA 59 (Jan. 12, 1971)

Applicability to Indian Probate

The requirement of the Administrative Procedure Act, that all decisions of an Examiner shall include a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, is mandatory and applicable to all decisions of Examiners in Indian probate proceedings.

Estate of Lucille Mathilda Callous Leg Ireland, 1 IBIA 67 (Mar. 19, 1971) 78 I. D. 66

Estate of Oscar Ough, Sr., 1 IBIA 76 (Mar. 25, 1971) 78 I. D. 105

APPEAL

Generally

Pleadings on appeal which are not timely filed may be stricken.

Estate of Jessie McGaa Craven, 1 IBIA 157 (Oct. 8, 1971)

Dismissal

Although 25 CFR 15 does not include any provision for rehearing after decision on appeal, the Board has inherent power to rectify manifest error.

Estate of Julius Benter, 1 IBIA 59 (Jan. 12, 1971)

An imperfect appeal will be dismissed with prejudice upon appellant's petition to withdraw the petition.

Estate of Eliza Shield Him, 1 IBIA 80 (Mar. 24, 1971)

Matters Considered on Appeal

The Board of Indian Appeals will not scour the record in Indian probate proceedings to find alleged irregularities which are not specified with at least some particularity in the appeal.

Estate of William Cecil Robedeaux, 1 IBIA 106 (July 20, 1971) 78 I. D. 234

An issue which has not been submitted to the Examiner in the petition for rehearing will not be considered on appeal.

Estate of Jessie McGaa Craven, 1 IBIA 157 (Oct. 8, 1971)

INDIAN PROBATE--Continued

APPEALS--Continued

Reconsideration

A rehearing after entry of a decision on appeal will not be granted except upon a showing of manifest error in such decision.

Estate of Julius Benter, 1 IBIA 59 (Jan. 12, 1971)

Timely Filing

When it appears an appeal is based upon a petition for rehearing void as not timely filed, the Examiner's order denying such petition will be affirmed.

Estate of Ralyen or Rabyea Voorhees, 1 IBIA 62 (Feb. 12, 1971)

ATTORNEYS AT LAW

Fees

In general, the jurisdiction of the Secretary to determine and award attorney fees in Indian probate proceedings will be asserted in two situations: where the fees are for representation of Indians in such probate proceedings, and where the fees are for services rendered in behalf of the decedent during his lifetime, in which latter event the claim is of the same genre as those of other general creditors.

Estate of William Cecil Robedeaux, 1 IBIA 106 (July 20, 1971) 78 I. D. 234

CHILDREN, ADOPTED

Right to Inherit

Child From Kin of Adoptive Parents

Under Oklahoma Uniform Adoption Act, a child adopted under prior law may inherit from relatives of adoptive parent where the person from whom inheritance is claimed dies after the date of enactment of Uniform Adoption Act.

Estate of George Green, 1 IBIA 147 (Sept. 2, 1971) 78 I. D. 281

CODE OF FEDERAL REGULATIONS (Title 25-Part 15-Interpretation & Construction)

The requirement of clear and convincing proof of a promise to pay for care and support, under 25 CFR 15.23 (d), may be fulfilled by oral testimony without the corroboration of documentary evidence.

Estate of Lucille Mathilda Callous Leg Ireland, 1 IBIA 67 (Mar. 19, 1971) 78 I. D. 66

COMPROMISE SETTLEMENTS

A "Family Agreement" which constitutes a compromise settlement diverting distribution of the estate

INDIAN PROBATE--Continued

COMPROMISE SETTLEMENTS--Continued

from the pattern required by the statutes or by the decedent's will is not to be considered except upon the unanimous consent of all the parties to the agreement.

Estate of Jessie McGaa Craven, 1 IBIA 157 (Oct. 8, 1971)

ESCHEAT

After a final order of escheat has been entered in Indian probate proceedings, one petitioning for reconsideration thereof has the burden of proof to establish his claim by a preponderance of the evidence.

Estate of Charles Daniels, 1 IBIA 177 (Nov. 19, 1971) 78 I.D. 329

EVIDENCE

Generally

Indian probate proceedings involve considerations which go beyond the conventional issues of a state probate proceeding and evidence may be admitted in an Indian probate proceeding which would not be relevant to the probate of a will in a state proceeding.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83 (May 21, 1971) 78 I. D. 179

HEARING EXAMINER

In the course of conducting an administrative proceeding, the Hearing Examiner should not assume the role of an adversary or advocate; but he owes a duty, as judge and inquisitor, particularly when a party is not represented by counsel, to elicit for the record all the material facts, both favorable and unfavorable, bearing on the contentions of that party.

Estate of Lucille Mathilda Callous Leg Ireland, 1 IBIA 67 (Mar. 19, 1971) 78 I. D. 66

INHERITING
(See also Children Adopted)

In general, rights of inheritance are determined by the law in effect on the date of death of the person from whom inheritance is claimed.

Estate of George Green, 1 IBIA 147 (Sept. 2, 1971) 78 I. D. 281

REHEARING

Generally

A petition for rehearing which fails to conform to the requirements of the regulations in either form or substance is properly denied.

Estate of Ralyen or Rabyea Voorhees, 1 IBIA 62 (Feb. 12, 1971)

INDIAN PROBATE--Continued

REHEARING--Continued

Generally--Continued

Regardless of procedural technicalities involved in the adjudication of petitions for rehearing in administrative proceedings, administrative tribunals should give the same priority toward securing a "just result" as is required of the courts in their proceedings.

Estate of Lucille Mathilda Callous Leg Ireland, 1 IBIA 67 (Mar. 19, 1971) 78 I. D. 66

Pleading, Timely Filing

A petition for rehearing must be physically delivered to the Superintendent on or before midnight of the sixtieth day following the Examiner's issuance and mailing of the final order in a probate if the same is to be treated as timely filed.

Estate of Ralyen or Rabyea Voorhees, 1 IBIA 62 (Feb. 12, 1971)

Where a petition for rehearing was not filed in the appropriate office of the Department of the Interior until the 61st day after entry of the original order, the hearing examiner lacked authority to extend the time for filing thereof and had no jurisdiction to determine the substantive issues raised in the petition on their merits.

Estate of Lucy Hope Deepwater, 1 IBIA 201 (Dec. 16, 1971)

REOPENING

Generally

A petition for reopening must comply in form and substance to the requirements of sec. 15.18 of 25 C.F.R.

When a petition for reopening is filed with the Examiner more than three years after the entry of the final decision in a probate, the petition is properly referred to the Board of Indian Appeals for disposition.

Estate of Eliza Shield Him, 1 IBIA 80 (Mar. 24, 1971)

Waiver of Time Limitation

The Board of Indian Appeals, acting under delegated authority from the Secrtary will not exercise discretion retained by the Secretary to waive time limitations without proper showing of merit in the petition.

Estate of Eliza Shield Him, 1 IBIA 80 (Mar. 24, 1971)

A petition to reopen filed more than three years after the entry of the order determining heirs and some ten years after the petitioner learned of his relationship to the decedent without explanation for the delay, will be denied for the reason that the petitioner has been dilatory in submitting his petition.

INDIAN PROBATE--Continued

REOPENING--Continued

Waiver of Time Limitation--Continued

The Board of Indian Appeals will not exercise Secretarial discretion duly delegated to it to waive the three-year time limitation for reopening where there is no showing of fraud, accident or mistake so compelling in nature as to require reopening and the petitioner has not shown a capability of establishing his claim by a preponderance of the evidence even if the matter were reopened.

Estate of Samuel Picknoll (Pickernell), 1 IBIA 168 (Nov. 1, 1971) 78 I.D. 325

A petition to reopen filed more than thirty years after entry of the order determining heirs and at least seven years after the petitioner acquired the belief that she was related to the decedent without explanation for the delay will be denied for the reason that the petitioner has been dilatory in submitting her petition.

Estate of Andy Williams, 1 IBIA 195 (Nov. 30, 1971) 78 I. D. 346

STATE LAW

Applicability to Indian Probate, Testate

Compliance with state laws setting forth requirements for the execution of wills is not required in the execution of Indian wills disposing of trust or restricted property.

Estate of William Cecil Robedeaux, 1 IBIA 106 (July 20, 1971) 78 I. D. 234

Pretermitted Heir

Absent an act of Congress, the Secretary, in determining the rights of pretermitted heirs in Indian probate matters, will not follow any state statutes dealing with the subject.

Estate of William Cecil Robedeaux, 1 IBIA 106 (July 20, 1971) 78 I. D. 234

WILLS

Aplicability of State Law

Indian probate proceedings involve considerations which go beyond the conventional issues of a state probate proceeding and evidence may be admitted in an Indian probate proceeding which would not be relevant to the probate of a will in a state proceeding.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83 (May 21, 1971) 78 I. D. 179

Construction of

When the intent of the testator is clear from the record as a whole, technical defects in the writing

INDIAN PROBATE--Continued

WILLS--Continued

Construction of--Continued

such as a scrivener's erroneous reference to a date shall not defeat such intent.

Estate of Jessie McGaa Craven, 1 IBIA 157 (Oct. 8, 1971)

Disapproval of Will

The Secretary is authorized to exercise his discretion in disapproving a devise in the will of a deceased Indian where approval of such devise would sanction a practice permitting the acquisition of Indian lands contrary to the public policy expressed in the statutory restrictions against the alienation of Indian lands held in trust.

Estate of Mary Ursula Rock Wellknown, 1 IBIA 83 (May 21, 1971) 78 I. D. 179

The Secretary cannot properly disapprove a valid Indian will merely because it may disinherit a potential heir at law.

Estate of Tineyuyah (Moses), 1 IBIA 103 (July 12, 1971)

Failure to Make Request of Witness

An Indian will is not rendered invalid by the failure of the testator to specifically request the attesting witness to sign the will, since there is no such requirement either in the statutes authorizing the disposition by Indians of their trust or restricted property by will or in the regulations.

Estate of William Cecil Robedeaux, 1 IBIA 106 (July 20, 1971) 78 I. D. 234

Publication

There is no requirement in the Indian probate regulations or the applicable statutes that the testator, at the time of the execution of his will, "publish" the same by openly declaring it to be his last will and testament.

Estate of William Cecil Robedeaux, 1 IBIA 106 (July 20, 1971) 78 I. D. 234

Testamentary Capacity

The burden of proof as to testamentary incapacity in Indian probate proceedings is on those contesting the will, and an Indian is not deemed to be incompetent to make a will by virtue of his being unable to manage his own property or business affairs or by appointment of a guardian for him.

Estate of William Cecil Robedeaux, 1 IBIA 106 (July 20, 1971) 78 I. D. 234

INDIAN PROBATE--Continued

WILLS--Continued

Undue Influence

In Indian probate proceedings, proof of undue influence in the execution of a will must be so substantial that the judges of fact, having a proper understanding of what undue influence is, may perceive by whom and in what manner it has been exercised, and what effect it has upon the will.

To invalidate an Indian will because of undue influence, it must be shown: (1) that the decedent was susceptible to being dominated by another; (2) that the person allegedly influencing the decedent in the execution of the will was capable of controlling his mind and actions; (3) that such person, at the time of the testamentary act, did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

Estate of William Cecil Robedeaux, 1 IBIA 106 (July 20, 1971) 78 I. D. 234

YAKIMA TRIBES

Generally

The amendment to the Yakima Enrollment Act (84 Stat. 1874) applies to all cases not closed at the time the amendment was enacted, and a case on appeal to the Board of Indian Appeals is considered to be open within the meaning of the amendment.

Estate of Oscar Ough, Sr., 1 IBIA 76 (Mar. 25, 1971) 78 I. D. 105

INDIAN REORGANIZATION ACT

Until school sections which either "shall be granted" . . or "are hereby granted" to states from lands on Indian reservations have been surveyed, title does not pass from the United States to the state. Such school sections, while unsurveyed, remain subject to the Indians' historic right of occupancy until that occupancy is extinguished by the United States. If that right is never extinguished, it must still exist. So the United States continues to hold title to such sections in trust for the Indians, and the Indians continue to enjoy their aboriginal right of occupancy in those sections under that trust.

Ownership of Unsurveyed School Lands Within the Flathead Indian Reservation, M-36827 (July 2, 1971)

When a group of Indians constitutes an historic "tribe" or "organized band" within the meaning of section 19 of the Indian Reorganization Act, and if it did not vote to reject the provisions of the Indian Reorganization Act, then the United States may acquire land for it under section 5 of the Indian Reorganization Act, and it may thereafter organize under section 16 of the Indian Reorganization Act.

INDIAN REORGANIZATION--Continued

Organization of the Nooksack Indians Under the Reorganization Act, M-36833 (Aug. 13, 1971)

The Twenty-Sixth Amendment to the Constitution, providing, inter alia, that "the United States" shall not deny or abridge the right of eighteen-year-olds to vote, applies to Indian tribes' elections called by the Secretary pursuant to the Indian Reorganization Act or other act, but, because of the fundamental right of a tribe to govern itself, the amendment does not apply to Indian tribes in purely tribal elections.

The Eighteen-Year-Old Vote Amendment as Applied to Indian Tribes, M-36840 (Nov. 9, 1971) 78 I. D. 349

INDIAN TRIBES

GENERALLY

A subordinate tribal entity or tribal member licensed by the Chippewa Cree Tribe to operate a liquor establishment on the Rocky Boy's Reservation does not have to obtain a state liquor license.

Applicability of the Liquor Laws of the State of Montana on the Rocky Boy's Reservation, M-36815 (Feb. 3, 1971) 78 I. D. 39

Utah game laws apply to non-Indians who hunt, even with the tribe's permission, on the Uintah and Ouray Indian Reservation. Thus, non-Indians cannot hunt on the reservation without procuring a state license, even though they may be licensed by the tribe to do so.

Criminal Jurisdiction of Utah Over Non-Indians Hunting on the Uintah and Ouray Reservation in Violation of State Law, M-36813 (Mar. 29, 1971), 78 I. D. 101

Considering that the Nooksack Indians were allowed to vote under section 18 of the Indian Reorganization Act, and voted in favor of it; that they received a relief and rehabilitation grant in 1938 through a trust agreement with the Commissioner of Indian Affairs; that the Nooksack Tribal Council requested the termination of that agreement, which termination was approved by the Bureau of Indian Affairs; that the traditional tribal council has continued to exercise certain responsibilities on behalf of the interests of the group; and that the Lummi Tribe may recognize the Nooksacks as a separate "tribe";--the Nooksack Indians constitute a "tribe" within the meaning of section 19 of the Indian Reorganization Act. Solicitor's Opinion, M-35013 (December 9, 1947), which reached a contrary conclusion, was based on other evidence.

Organization of the Nooksack Indians Under the Reorganization Act, M-36833 (Aug. 13, 1971)

INDIAN TRIBES--Continued

SOVEREIGN POWERS

The Winnebago Tribe has the power through its inherent right to govern itself and implied in its Constitution to create a tribal court to hear cases involving Indians who violate the tribal hunting and fishing laws. Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. sec. 1162 and 28 U.S.C. sec. 1360) does not derogate from this power in regard to hunting and fishing.

Power of the Winnebago Tribe to Create a Tribal Court to Hear Cases Involving Indians Who Violate Tribal Hunting and Fishing Laws, M-36821 (Mar. 19, 1971)

A tribal council acting in a legislative capacity is not required to provide interested persons with an opportunity to present their position prior to enactment of an ordinance.

Jurisdiction of Indian Tribes to Prohibit Aerial Crop Spraying Within the Confines of a Reservation, M-36826 (Apr. 19, 1971) 78 I.D. 229

The Twenty-Sixth Amendment to the Constitution, providing, inter alia, that "the United States" shall not deny or abridge the right of eighteen-year-olds to vote, applies to Indian tribes' elections called by the Secretary pursuant to the Indian Reorganization Act or other act, but, because of the fundamental right of a tribe to govern itself, the amendment does not apply to Indian tribes in purely tribal elections.

The Eighteen-Year-Old Vote Amendment as Applied to Indian Tribes, M-36840 (Nov. 9, 1971) 78 I.D.349

INDIANS

CIVIL JURISDICTION

States which have assumed the requisite jurisdiction over Indian country under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. section 1162 and 28 U.S.C. section 1360) or under the Civil Rights Act of 1968 (Act of April 11, 1968, 82 Stat. 77-81, 25 U.S.C. sections 1321-1322 (Supp. V, 1965-1969)) are required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations if the enforcement does not involve the regulation of property held in trust by the United States for the benefit of the Indians. States which have not assumed the aforementioned jurisdiction over Indian country are not authorized or required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations unless the Secretary of the Interior were to enact regulations authorizing such enforcement under the authority granted him by the Act of February 15, 1929, 45 Stat. 1185, as amended, 25 U.S.C. section 231.

Applicability of the Wholesome Meat Act of 1967 on Indian Reservations, M-36811 (Feb. 1, 1971) 78 I.D. 18

INDIANS--Continued

CIVIL JURISDICTION--Continued

Because the Congress has never manifested an intent to diminish or dissolve the Puyallup Reservation, as its boundaries were established in 1873, such boundaries continue to exist for federal and tribal purposes. Therefore, the Puyallup Tribe possesses the exclusive right to fish on the Puyallup River within those 1873 boundaries; the State of Washington may not exercise any authority over Puyallup Indians fishing on the Puyallup River within those boundaries; and the state may not regulate other Indians fishing there, at least when such fishing by such Indians has been permitted by the Puyallup Tribe.

Status of the Puyallup Reservation in the State of Washington, M-36825 (Mar. 26 1971)

M-36825 (Supp.) (Aug. 11, 1971)

The financial responsibility law of the State of Washington applies to Indians involved in an automobile accident on a private road within the Yakima Indian Reservation. The state, in requiring the Indians to post bond under the authority of this law, is not assuming any jurisdiction over Indians on reservation lands greater than that permitted under RCW 37.12.010 or under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. sec. 1162 and 28 U.S.C. sec. 1360 (1964)).

Applicability of the Financial Responsibility Law of Washington to Indians on the Yakima Reservation, M-36829 (July 20, 1971)

CIVIL RIGHTS

A tribal ordinance which prohibits all aerial crop spraying within the confines of the Fort Hall Indian Reservation because of a history of damage occasioned by such spray falling upon neighboring lands in the reservation not intended for such spraying is not violative of the due process requirement of Title II, sec. 202, subsection (8), of the Civil Rights Act of Apr. 11, 1968, 82 Stat. 77; 25 U.S.C. sec. 1302 (Supp. V, 1965-1969), even though the ordinance prohibits the continuation of a recognized and useful occupation, and may impair the performance of a contract previously made.

Jurisdiction of Indian Tribes to Prohibit Aerial Crop Spraying Within the Confines of a Reservation, M-36826 (Apr. 19, 1971) 78 I.D. 229

The Twenty-Sixth Amendment to the Constitution, providing, inter alia, that "the United States" shall not deny or abridge the right of eighteen-year-olds to vote, applies to Indian tribes' elections called by the Secretary pursuant to the Indian Reorganization Act or other act, but, because of the fundamental right of a tribe to govern itself, the amendment does not apply to Indian tribes in purely tribal elections.

The Eighteen-Year-Old Vote Amendment as Applied to Indian Tribes, M-36840 (Nov. 9, 1971) 78 I.D.349

INDIANS--Continued

CRIMINAL JURISDICTION

States which have assumed the requisite jurisdiction over Indian country under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. section 1162 and 28 U.S.C. section 1360) or under the Civil Rights Act of 1968 (Act of April 11, 1968, 82 Stat. 77-81, 25 U.S.C. sections 1321-1322 (Supp. V. 1965-1969)) are required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations if the enforcement does not involve the regulation of property held in trust by the United States for the benefit of the Indians. States which have not assumed the aforementioned jurisdiction over Indian country are not authorized or required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations unless the Secretary of the Interior were to enact regulations authorizing such enforcement under the authority granted him by the Act of February 15, 1929, 45 Stat. 1185, as amended, 25 U.S.C. section 231.

Applicability of the Wholesome Meat Act of 1967 on Indian Reservations, M-36811 (Feb. 1, 1971) 78 I.D. 18

The modification of the Federal Indian liquor laws, permitting the introduction, possession and sale of intoxicating beverages on the reservation with tribal consent (Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. section 1161 (1964)) does not make Montana liquor laws applicable to the Chippewa Cree Tribe or tribal members on the Rocky Boy's Reservation. Rather, this act requires the state liquor laws to be used as the standard of measurement to define lawful and unlawful activity on the reservation. Actions not in conformity with the provisions of applicable state law would subject a tribal member to prosecution only in the Federal courts, not in state courts. Non-Indians would be subject to prosecution in the Federal and state courts, assuming a double jeopardy question is not presented.

Applicability of the Liquor Laws of the State of Montana on the Rocky Boy's Reservation, M-36815 (Feb. 3, 1971) 78 I.D. 39

The Winnebago Tribe has the power through its inherent right to govern itself and implied in its Constitution to create a tribal court to hear cases involving Indians who violate the tribal hunting and fishing laws. Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. sec. 1162 and 28 U.S.C. sec. 1360) does not derogate from this power in regard to hunting and fishing.

Power of the Winnebago Tribe to Create a Tribal Court to Hear Cases Involving Indians Who Violate Tribal Hunting and Fishing Laws, M-36821 (Mar. 19, 1971)

Because the Congress has never manifested an intent to diminish or dissolve the Puyallup Reservation, as its boundaries were established in 1873, such

INDIANS--Continued

CRIMINAL JURISDICTION--Continued

boundaries continue to exist for federal and tribal purposes. Therefore, the Puyallup Tribe possesses the exclusive right to fish on the Puyallup River within those 1873 boundaries; the State of Washington may not exercise any authority over Puyallup Indians fishing on the Puyallup River within those boundaries; and the state may not regulate other Indians fishing there, at least when such fishing by such Indians has been permitted by the Puyallup Tribe.

Status of the Puyallup Reservation in the State of Washington, M-36825 (Mar. 26, 1971)

M-36825 (Supp.) (Aug. 11, 1971)

LAW AND ORDER

The modification of the Federal Indian liquor laws, permitting the introduction, possession and sale of intoxicating beverages on the reservation with tribal consent (Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. section 1161 (1964)) does not make Montana liquor laws applicable to the Chippewa Cree Tribe or tribal members on the Rocky Boy's Reservation. Rather, this act requires the state liquor laws to be used as the standard of measurement to define lawful and unlawful activity on the reservation. Actions not in conformity with the provisions of applicable state law would subject a tribal member to prosecution only in the Federal courts, not in state courts. Non-Indians would be subject to prosecution in the Federal and state courts, assuming a double jeopardy question is not presented.

A subordinate tribal entity or tribal member licensed by the Chippewa Cree Tribe to operate a liquor establishment on the Rocky Boy's Reservation does not have to obtain a state liquor license.

Applicability of the Liquor Laws of the State of Montana on the Rocky Boy's Reservation, M-36815 (Feb. 3, 1971) 78 I.D. 39

LABOR

(See also Contracts)

GENERALLY

The prohibition against contracts involving the employment of convict labor as contained in Executive Order 325a does not apply to those cooperative agreements entered into by the Bureau of Land Management and the several States which provide for emergency manpower assistance for the suppression of fires, even though, the States may rely in part upon trained convict crews for such emergency manpower reserves.

Use of State Convicts in BLM Fire-Suppression Work, M-36832 (Aug. 13, 1971) 78 I.D. 269

LIEU SELECTIONS

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 act for that purpose.

Masonic Homes of California, 4 IBLA 23 (Oct. 27, 1971) 78 I.D.312

MINERAL LANDS

GENERALLY

Where an applicant for a prospecting permit does not personally submit a statement of citizenship and acreage holdings in his own name, his power of attorney must specifically authorize and empower his attorney-in-fact to make such statement or to execute all statements which may be required under the regulations.

Frank Allison, 3 IBLA 317 (Oct. 8, 1971)

MINERAL RESERVATION

Where an applicant for a prospecting permit soes not personallysubmit a statement of citizenship and acreage holdings in his own name, his power of attorney must specifically authorize and empower his attorney-in-fact to make such statement or to execute all statements which may be required under the regulations.

Frank Allison, 3 IBLA 317 (Oct. 8, 1971)

A reservation of all minerals to the United States in a patent of public lands to the State of Arizona pursuant to 43 U.S.C. § 315(g) (1970) reserves valuable deposits of sand and gravel found thereon. No exception to this rule applies where those materials comprise all or substantially all of the land in question because the statute makes provision for the owner of the surface estate to receive payment for damages caused to the land and improvements thereon by mining operations.

United States v. Isbell Construction Company, 4 IBLA 205 (Dec. 30, 1971) 78 I.D. 385

NONMINERAL ENTRIES

Land which is mineral in character is not subject to public sale.

Land which is included in mining claims is not available for sale under 43 U.S.C. §1171 (1964) prior to a determination of the invalidity of the claims in appropriate administrative proceedings, and such proceedings will not be instituted where any advantage to the public interest that would be derived from effecting the public sale is too slight to warrant the expense and time required to contest the claims.

Richard W. Van Dyke, Marjorie Van Dyke, 3 IBLA 222 (Sept. 8, 1971)

MINERAL LANDS--Continued

PROSPECTING PERMITS

An applicant for a prospecting permit to explore for copper and other hardrock minerals is properly required to agree to certain stipulations as a condition precedent to the issuance of the permit when there is no showing that the requirements are unreasonable, arbitrary, or unduly onerous, and where those stipulations conform to the Department's obligations under the National Environmental Policy Act of 1969.

J. D. Archer, Elizabeth B. Archer, 2 IBLA 303 (May 26, 1971) 78 I.D. 189

An application for a hard rock prospecting permit for acquired lands within an experimental watershed in a national forest is properly rejected where the Forest Service refuses to consent to allowance of the application because of possible adverse effects to the watershed, and its reasons are consistent with the purposes for which the lands were acquired and with the ecological factors expressed in the National Environmental Policy Act of 1969.

Henry N. Gerritsen and John Xanthos, 3 IBLA 90 (Aug. 9, 1971)

Where an applícant for a prospecting permit does not personally submit a statement of citizenship and acreage holdings in his own name, his power of attorney must specifically authorize and empower his attorney-in-fact to make such statement or to execute all statements which may be required under the regulations.

Frank Allison, 3 IBLA 317 (Oct. 8, 1971)

MINERAL LEASING ACT

GENERALLY

Where an applicant for a prospecting permit does not personally submit a statement of citizenship and acreage holdings in his own name, his power of attorney must specifically authorize and empower his attorney-in-fact to make such statement or to execute all statements which may be required under the regulations.

Frank Allison, 3 IBLA 317 (Oct. 8, 1971)

The Secretary has authority under section 19 of the Permanent Appropriations Repeal Act of June 26, 1934, as amended, to accept payment of revenues derived from oil shale leases covering lands within unpatented mining claims in accordance with a written agreement among the interested parties to place the money in a trust-fund account pending ultimate judicial determination of the respective rights of the parties, and, where provided for in the agreement and consented to by the lessee, to hold the revenues (1) for payment to the mining claimants upon issuance to them of patents if it should be determined that the mining claimants are entitled to the exclusive right of possession and enjoyment of the oil shale deposits and lands containing them, or (2) for transfer to the appropriate earned accounts if the mining claims are ruled invalid.

MINERAL LEASING ACT--Continued

GENERALLY--Continued

Where revenues derived from oil shale leases covering lands within unpatented mining claims are accepted as payment in accordance with an escrow agreement to that effect among the interested parties, and it is ultimately determined that the mining claimants are entitled to the issuance of patents based upon their exclusive right of possession and enjoyment of the oil shale deposits and lands containing them, the Secretary would be required by section 204(a) of the Act of July 14, 1960, to pay the lease revenues to the mining claimants upon issuance to them of patents, where the agreement so provides and it is consented to by the lessee.

Competitive Leasing of Oil Shale Lands Covered by Unpatented Mining Claims, M-36839 (Oct. 28, 1971)

Under section 21 of the Mineral Leasing Act of 1920, as amended, a person, association, or corporation may take and hold directly only one oil shale lease, which shall not exceed 5,120 acres. If that lease should expire or terminate for any reason, or be transferred, the lessee would not, on account of the issuance of the prior lease, be barred from acquiring another oil shale lease.

Sections 21 and 27(e) (1) of the Mineral Leasing Act of 1920, as amended, must be read together, and, when so construed, they permit a person, association, or corporation to take, hold, own, or control indirect interests in oil shale leases as a member of associations or as a stockholder in corporations, each holding an oil shale lease, if those interests, together with acreage directly held, owned, or controlled under an oil shale lease, do not exceed in the aggregate 5,120 acres.

Under the excepting clause of section 27(e)(1) of the Mineral Leasing Act of 1920, as amended, where a person is the beneficial owner of 10 per cent or less of the stock or other instruments of ownership or control of an association or corporation holding an oil shale lease, that indirect interest would not be chargeable against his aggregate allowable oil shale lease acreage of 5,120 acres.

Limitations on Oil Shale Lease Holdings, M-36843 (Nov. 12, 1971)

APPLICABILITY

Sodium zeolites are sodium aluminum silicate compounds and as such are substances of sodium enumerated in section 23 of the Mineral Leasing Act.

Substances of sodium enumerated in section 23 of the Mineral Leasing Act, whether simple, double, or complex compounds of sodium, are subject to disposition only under the provisions of the Mineral Leasing Act, and, consequently, are not subject to location and acquisition under the mining laws.

Disposition of Sodium Zeolites Under the Mineral Leasing Act of 1920, M-36823 (May 7, 1971)

MINERAL LEASING ACT--Continued

LANDS SUBJECT TO

Tidelands are not subject to leasing for oil and gas under the Mineral Leasing Act.

Sarah Ann Christie, 3 IBLA 7 (July 6, 1971)

MINERAL LEASING ACT FOR ACQUIRED LANDS

CONSENT OF AGENCY

The Secretary of the Interior exercises discretion in determining whether or not acquired lands under his jurisdiction should be opened to prospecting for sulphur, and where it is determined by the Bureau of Reclamation that lands under its administrative jurisdiction should not be opened to such prospecting because of potential damage to its surface works, and where the Geological Survey concurs in such recommendation, applications for sulphur prospecting permits on such lands will be rejected in the absence of compelling reasons otherwise.

W. A. Hudson, II, W. A. Hudson, Edward R. Hudson, 1 IBLA 232 (Jan. 15, 1971) 78 I. D. 15

An application for a hard rock prospecting permit for acquired lands within an experimental watershed in a national forest is properly rejected where the Forest Service refuses to consent to allowance of the application because of possible adverse effects to the watershed, and its reasons are consistent with the purposes for which the lands were acquired and with the ecological factors expressed in the National Environmental Policy Act of 1969.

Henry N. Gerritsen and John Xanthos, 3 IBLA 90 (Aug. 9, 1971)

MINING CLAIMS
(See also Surface Resources Act)

GENERALLY

Sodium zeolites are among the substances of sodium enumerated in section 23 of the Mineral Leasing Act, viz. silicates of sodium, and, consequently, are not subject to location and acquisition under the mining laws.

Disposition of Sodium Zeolites Under the Mineral Leasing Act of 1920, M-36823 (May 7, 1971)

For a mining claim to be valid, the required discovery must be made within the limits of the claim as located; a discovery outside the limits of the claim cannot serve to validate it despite the proximity of the discovery to the claim.

United States v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (May 20, 1971)

Where an Indian allotment application cannot be allowed because the land covered thereby is withdrawn from appropriation and disposition

MINING CLAIMS--Continued

GENERALLY--Continued

by power site withdrawals, no useful purpose would be served at this time to investigate the validity of a conflicting mining claim which antedates the filing of the Indian allotment application.

Donald E. Miller, 2 IBLA 209 (May 26, 1971)

The United States mining laws give to the owner of mining claims as a necessary incident a nonexclusive right of access across the public lands to their claims for purposes of maintaining the claims and as a means of removing the minerals. Therefore, an owner of a mining claim may construct and maintain across the public lands a nonexclusive road for such purposes.

Alfred E. Koenig, 4 IBLA 18 (Oct. 26, 1971)
78 I.D. 305

The Secretary has authority under section 19 of the Permanent Appropriations Repeal Act of June 26, 1934, as amended, to accept payment of revenues derived from oil shale leases covering lands within unpatented mining claims in accordance with a written agreement among the interested parties to place the money in a trust-fund account pending ultimate judicial determination of the respective rights of the parties, and, where provided for in the agreement and consented to by the lessee, to hold the revenues (1) for payment to the mining claimants upon issuance to them of patents if it should be determined that the mining claimants are entitled to the exclusive right of possession and enjoyment of the oil shale deposits and lands containing them, or (2) for transfer to the appropriate earned accounts if the mining claims are ruled invalid.

Where revenues derived from oil shale leases covering lands within unpatented mining claims are accepted as payment in accordance with an escrow agreement to that effect among the interested parties, and it is ultimately determined that the mining claimants are entitled to the issuance of patents based upon their exclusive right of possession and enjoyment of the oil shale deposits and lands containing them, the Secretary would be required by section 204(a) of the Act of July 14, 1960, to pay the lease revenues to the mining claimants upon issuance to them of patents, where the agreement so provides and it is consented to by the lessee.

Competitive Leasing of Oil Shale Lands Covered by Unpatented Mining Claims, M-36839 (Oct. 28, 1971)

Absent a statutory direction to the contrary, lands acquired by purchase do not thereby acquire a public land status and are therefore not subject to the operation of the United States mining laws.

The Act of August 10, 1939, 53 Stat. 1347, adding certain lands to the Kaniksu National Forest, constitutes such a statutory direction.

Ernest Smith, Ruth Smith, 4 IBLA 192 (Dec. 27, 1971) 78 I.D. 368

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS

Generally

To satisfy the requirements for discovery on a placer mining claim located for a common variety of pumiceous material before July 23, 1955, it must by shown that the exposed material could have been removed and marketed at a profit on that date, as well as at the present time; where such a showing is not made, the claim is properly declared null and void.

United States v. Paul M. Thomas et al., 1 IBLA 209 (Jan. 12, 1971) 78 I.D. 5

To satisfy the requirements for discovery on a placer mining claim located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit as of that date. Where the evidence shows that there is an abundant supply of similar sand and gravel in the area of the claim, that sand and gravel was being produced and sold in the area on July 23, 1955, and that no sand and gravel had been or was being marketed from the claim as of that date, the fact that the material on the claim is sufficient both as to quantity and quality, as is the abundant supply of similar material found in the area, is insufficient to show that material from this particular claim could have been profitably removed and marketed on July 23, 1955, and the claim is properly declared null and void.

United States v. William A. McCall, Sr., The Dredge Corporation, Estate of Olaf H. Nelson, Deceased Small Tract Applicants Association, Intervenor, 2 IBLA 64 (Mar. 22, 1971)
78 I.D.71

To satisfy the requirements for discovery on a placer claim located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit as of that date. Where the evidence shows that there is an abundant supply of similar sand and gravel in the area of the claim, that sand and gravel was being produced and sold in the area on July 23, 1955, and that no sand and gravel had been or was being marketed from the claim on July 23, 1955, the fact that the material on the claim is sufficient, both as to quantity and quality, as is the abundant supply of similar material in the area, is insufficient to show that material from the particular claim could have been profitably removed and marketed as of July 23, 1955, and the claim is properly declared null and void.

To satisfy the requirement of discovery on a placer mining claim located for sand and gravel prior to July 23, 1955, it must be shown that the deposit could have been extracted, removed, and marketed at a profit as of that date and not as of some prospective date; where claimants fail to make that showing, the claim is properly declared null and void.

United States v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (May 20, 1971)

MINING CLAIMS--Continued

COMMON VARIETIES OF MINERALS--Continued

Generally--Continued

To satisfy the requirements for discovery on placer claims located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit as of that date. Where the evidence shows that there is an abundant supply of similar sand and gravel in the area of the claim, and that no sand and gravel had been or was being marketed from the claim on July 23, 1955, the fact that the material on the claim is sufficient, both as to quantity and quality, as is the abundant supply of similar material in the area, is inadequate to show that material from the particular claim could have been profitably removed and marketed as of July 23, 1955, and the claim is properly declared null and void.

To satisfy the requirements of discovery on placer mining claims located for sand and gravel prior to July 23, 1955, it must be shown that the deposits could have been extracted, removed, and marketed at a profit as of that date and not as of some prospective date; where claimant fails to make that showing, the claims are properly declared null and void.

United States v. Isbell Construction Company, 4 IBLA 205 (Dec. 30, 1971) 78 I.D. 385

Special Value

The fact that pumiceous material may occur in nature in pieces having one dimension of two inches or more does not, by itself, establish that the material is "block pumice" which is excluded by statute from the category of common varieties of pumice.

To determine whether a deposit of pumiceous material is a common variety, there must be a comparison of the material in that deposit with other similar-type materials in order to ascertain whether the material has a property giving it a distinct and special value; where the material can be used for purposes for which common varieties of other materials can be substituted, and where it is not shown that it has any advantage over such substitute materials which is reflected in a higher price in the market place, it is properly determined that the material is a common variety not subject to location under the mining laws of the United States after July 23, 1955.

United States v. Paul M. Thomas et al., 1 IBLA 209 (Jan. 12, 1971) 78 I. D. 5

Unique Property

The fact that pumiceous material may occur in nature in pieces having one dimension of two inches or more does not, by itself, establish that the material is "block pumice" which is excluded by statute from the category of common varieties of pumice.

To determine whether a deposit of pumiceous material is a common variety, there must be a comparison of the material in that deposit with other similar-type materials in order to ascertain whether the material has a property giving it a distinct and special value; where the material can be used for purposes for which common varieties of other materials can be substituted, and where it is not shown that it has any advantage over such substitute materials which is reflected in a higher price in the market place, it is properly determined that the material is a common variety not subject to location under the mining laws of the United States after July 23, 1955.

United States v. Paul M. Thomas et al., 1 IBLA 209 (Jan. 12, 1971) 78 I. D. 5

CONTESTS

In a mining claim validity proceeding, a Government mineral examiner only has the duty to examine the workings on a mining claim to verify whether an alleged discovery of a valuable mineral deposit has been made; he does not need to sample beyond the claimant's discovery points or do work to establish a discovery for the claimant.

United States v. Hines Gilbert Gold Mines Company, 1 IBLA 296 (Feb. 25, 1971)

It is the duty of a mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners, and an examiner has no duty either to rehabilitate discovery points or to explore beyond the current workings of the mining claimant in an effort to verify a purported discovery.

United States of America v. Herbert H. Mullin, Pearl F. Mullin, C. A. Gussman, 2 IBLA 133 (Apr. 7, 1971)

The technical exclusionary rules of evidence applied in court proceedings need not be followed in administrative hearings; therefore, the fact that hearsay evidence, consisting of an assay report, was received by the Hearing Examiner in a Government contest, together with other evidence, is no reason for changing a decision which is sustainable even without such evidence.

Testimony by a Government mineral examiner that he examined a mining claim and the workings

MINING CLAIMS--Continued

CONTESTS--Continued

thereon but found no evidence of a valuable mineral deposit is sufficient to establish a prima facie case by the Government as to its right to use and manage the surface of the claim.

United States v. A. P. Jones, 2 IBLA 140 (Apr. 8, 1971)

A mining claim is properly declared invalid and patent application therefor is properly rejected where the Government establishes a prima facie case of lack of discovery, and the contestee presents no direct or rebuttal evidence.

United States v. Maurice E. Jones, 2 IBLA 237 (Apr. 30, 1971)

The regulations which provide that a contestee must file his answer to a contest complaint within 30 days of service, failing which the allegations of the complaint will be taken as admitted, and which require the manager to decide the case without a hearing are mandatory, and the Secretary is without authority to waive the rules to permit the late filing of an answer.

United States v. Nelson E. Divine et al., 2 IBLA 258 (May 10, 1971)

In a government mining contest, where the contestant has made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimant, and he cannot secure a determination that the claim is valid merely by attempting to discredit and impeach the government's witnesses.

United States v. Wayne Winters d/b/a Piedras Del Sol Mining Company, 2 IBLA 329 (June 2, 1971) 78 I.D. 193

Where a contest is brought by the Government against a mining claim, its burden of proof extends only to going forward with sufficient evidence to establish a prima facie case; the burden then shifts to the contestee to show by a preponderance of the evidence that his claim is valid.

United States of America v. Elkhorn Mining Company, 2 IBLA 383 (June 28, 1971)

Under the Department's regulations governing government contests against mining claims, where an answer to a complaint is filed even one day late, the allegations of the complaint will be taken as admitted by the contestee and the case will be decided without a hearing by the land office manager.

United States v. Ray L. Pruett & Freida C. Pruett, 3 IBLA 23 (July 15, 1971)

A motion by a contestee to stay all proceedings in a contest because of the filing of a mineral patent application for the same lands embraced in the contest proceedings, and assertedly based upon the holding of the land for the period of time prescribed by the State statute of limitations for adverse possession will be denied, since

MINING CLAIMS--Continued

CONTESTS--Continued

that patent application cannot breathe new life into the mining claims and mill sites at issue in the contest proceedings.

United States v. Richard P. Haskins et al., 3 IBLA 77 (July 30, 1971)

Where a Government contest complaint charges a lack of discovery and a contestee responds within the time required for filing an answer but the response fails to deny the allegations contained in the complaint, the allegations will be taken as admitted and the mining claims will be declared null and void.

United States v. Irvin Nielsen et al., 3 IBLA 53 (July 30, 1971)

Where a Government contest complaint against a mill site claim contains charges which, if proved, would render the claim invalid, and the contestees fail to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestees and the claim is properly declared null and void by the land office manager under the Department's regulations governing such contests, which allow no exception for appellant's alleged reasons of illness and misplacement of contest complaint.

United States v. Alfred W. Storer and Cecile C. Storer, 3 IBLA 151 (Aug. 30, 1971)

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the claimant then has the burden of proof to show with a preponderance of the evidence that a discovery has been made.

United States v. Howard S. McKenzie, 4 IBLA 97 (Nov. 19, 1971)

DETERMINATION OF VALIDITY

In determining whether a mining claim has been validated by a discovery of a valuable mineral deposit, each case must be examined on its own facts by applying the prudent man test, which includes a consideration of economic factors upon which a prudent man's expectation of developing a valuable mine would be based.

United States v. Hines Gilbert Gold Mines Company, 1 IBLA 296 (Feb. 25, 1971)

To constitute a discovery upon a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

A mining claim is properly declared invalid and patent application therefor is properly rejected

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

where the Government establishes a prima facie case of lack of discovery, and the contestee presents no direct or rebuttal evidence.

United States v. Maurice E. Jones, 2 IBLA 237 (Apr. 30, 1971)

For a mining claim to be valid, the required discovery must be made within the limits of the claim as located; a discovery outside the limits of the claim cannot serve to validate it despite the the proximity of the discovery to the claim.

United States v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (May 20, 1971)

Government mineral examiners determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the government's prima facie case.

United States v. Wayne Winters d/b/a Piedras Del Sol Mining Company, 2 IBLA 329 (June 2, 1971)

78 I. D. 193

The derivation of revenue from fees paid by persons for the privilege of entering a mine to breathe air which contains radon gas released by the natural process of the decay of uranium is not a mining operation within the meaning of the mining laws, and such an activity does not constitute the discovery of a valuable mineral deposit essential to the creation of a valid mineral location.

United States of America v. Elkhorn Mining Company, 2 IBLA 383 (June 28, 1971)

Government mineral examiners determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the government's prima facie case.

The sole basis for decision in a contest case is the record made at the hearing, although evidence submitted on appeal can be considered for the purpose of determining whether a further hearing is warranted; but in the absence of substantial proof tending to show the existence of a valid discovery on the claims there is no basis for further evidentiary proceedings.

United States v. Jimmie (Juanita) P. Laing, 3 IBLA 108 (Aug. 19, 1971)

A mining claim on land open to the operation of the mining laws may not be declared invalid without proper notice and opportunity for hearing.

Richard W. Van Dyke, Marjorie Van Dyke, 3 IBLA 222 (Sept. 8, 1971)

MINING CLAIMS--Continued

DETERMINATION OF VALIDITY--Continued

An applicant for a mineral patent must maintain his mining claim in such a condition that the Government may examine his discovery points to verify the existence of the mineral deposit, and the Government's mineral examiner need not clean out or rehabilitate the claimant's discovery points or explore beyond the pits currently exposed.

A mineral patent application is properly rejected and the mining claims properly declared null and void where the Government has shown that a prudent man could not expect to mine a deposit of barite profitably because the barite does not meet market standards, and the contestee's evidence fails to show that all the costs of the mining operation, including milling operations necessary to upgrade the mineral, if possible, to market standards and improvement of a road necessary to haul the material from the claims, would be justified by the expected returns of a reasonably estimated volume of mineral within the known extent of the deposit.

United States v. Howard S. McKenzie, 4 IBLA 97 (Nov. 19, 1971)

DISCOVERY

A finding of invalidity of mining claims located for limestone and various other minerals will be affirmed in the absence of any showing that mining the minerals can reasonably be expected to yield a profit over the cost of extraction and removal and where the preponderance of evidence supports a conclusion that there is no practical, economical method of mining it at all.

United States v. Charles D. Jones et al., 3 IBLA 177 (Sept. 3, 1971)

Generally

In determining whether a mining claim has been validated by a discovery of a valuable mineral deposit, each case must be examined on its own facts by applying the prudent man test, which includes a consideration of economic factors upon which a prudent man's expectation of developing a valuable mine would be based.

In a mining claim validity proceeding, a Government mineral examiner only has the duty to examine the workings on a mining claim to verify whether an alleged discovery of a valuable mineral deposit has been made; he does not need to sample beyond the claimant's discovery points or do work to establish a discovery for the claimant.

United States v. Hines Gilbert Gold Mines Company, 1 IBLA 296 (Feb. 25, 1971)

The mere presence of slight amounts of gold on a placer mining claim located for gold does not satisfy the requirement of the discovery of a "valuable mineral deposit" under the mining laws where

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

it is shown that the amount of gold present is extremely limited and would not warrant a man of ordinary prudence in the further expenditure of time and money with a reasonable prospect of success in developing a paying mine.

It is the duty of a mining claimant whose claim is being contested to keep discovery points available for inspection by Government mineral examiners, and an examiner has no duty either to rehabilitate discovery points or to explore beyond the current workings of the mining claimant in an effort to verify a purported discovery.

United States of America v. Herbert H. Mullin, Pearl F. Mullin, C. A. Gussman, 2 IBLA 133 (Apr. 7, 1971)

To constitute a valid discovery upon a lode mining claim there must be exposed within the limits of the claim a lode or vein bearing mineral in quantities which would warrant a prudent man to expend his labor and means, with a reasonable prospect of success, in developing a valuable mine; a showing which would only warrant further exploration in the hope of finding a valuable deposit is not sufficient.

United States v. A. P. Jones, 2 IBLA 140 (Apr. 8, 1971)

To constitute a discovery upon a gold placer claim there must be shown within the limits of the claim a mineral deposit sufficient to warrant a prudent man in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine.

Evidence of a mineral deposit which is sufficient only to warrant further exploration is not enough to establish a discovery under the mining laws.

United States v. Federal Materials, Inc., 2 IBLA 161 (Apr. 12, 1971)

To constitute a discovery upon a lode mining claim there must be physically exposed within the limits of the claim a lode or vein bearing minerals in such quality and quantity to warrant a prudent man in expending his labor and means, with a reasonable prospect of success, in developing a valuable mine.

Evidence of mineralization sufficient only to warrant further exploration is insufficient to establish discovery of a valuable mineral deposit under the mining laws.

United States v. Maurice E. Jones, 2 IBLA 237 (Apr. 30, 1971)

For a mining claim to be valid, the required discovery must be made within the limits of the claim as located; a discovery outside the limits of the claim cannot serve

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

to validate it despite the proximity of the discovery to the claim.

United States v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (May 20, 1971)

The prudent man test of discovery of a valuable mineral deposit does not require present profitable mining operations, but it does require evidence of sufficient mineralization to justify a prudent man in expecting to develop a valuable mine with profits from sales over the expected cost of the operation, and the claimant's unfounded conjecture that the price of gold will increase in the future is not a relevant consideration.

In a mining claim contest, a showing of mineralization which might justify further exploration for minerals but not development of a mine is not sufficient to satisfy the prudent man test.

Government mineral examiners determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the government's prima facie case.

In a government mining contest, where the contestant has made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable mineral deposit sufficient to support a discovery is upon the claimant, and he cannot secure a determination that the claim is valid merely by attempting to discredit and impeach the government's witnesses.

New evidence tendered on appeal is not sufficient to justify further evidentiary proceedings, although it might discredit testimony by government mineral examiners that two of their samples of a placer mining claim were taken to bedrock, where there is no tender of proof showing that the alleged greater mineral values at bedrock actually exist and the record does not show evidence of sufficient gold to warrant a prudent man to anticipate development of a valuable mine.

United States v. Wayne Winters d/b/a Piedras Del Sol Mining Company, 2 IBLA 329 (June 2, 1971) 78 I.D. 193

Evidence of mineralization which is only sufficient to warrant further exploration is not enough to establish a discovery under the mining law.

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

"Exploration" is the process of searching for a valuable mineral deposit. The finding of mineralization of sufficient value to encourage further exploration does not successfully conclude the exploratory process or constitute a discovery.

"Discovery" occurs upon the finding of a mineral deposit revealed to be of sufficient qualitative and quantitative value to warrant the expenditure of effort to develop a mine in the reasonable anticipation that a profitable mining operation will result.

"Development" refers to the physical work incident to the excavation of a mine for the extraction of the mineral values discovered. After discovery, certain exploratory activities incident to the actual production of the minerals are regarded as "development" rather than as "exploration". These would include the blocking out of the ore body, testing for engineering feasibility, determining the strike and dip of the vein beyond the extent of the qualifying knowledge, and related activities.

United States v. New Mexico Mines, Inc., 3 IBLA 101 (Aug. 18, 1971)

Government mineral examiners determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the government's prima facie case.

United States v. Jimmie (Juanita) P. Laing, 3 IBLA 108 (Aug. 19, 1971)

A decision holding that certain placer mining claims located for silica sands are null and void for lack of a discovery of valuable deposit of mineral will be reversed where a preponderance of the evidence adduced at the contest hearing shows that the sands are of glass quality, that a market for such sands exists in close proximity and that it is reasonable to anticipate that such sands can be beneficiated at a cost which will make them competitive with present suppliers of the existing market.

United States v. Kosanke Sand Corporation, 3 IBLA 189 (Sept. 3, 1971) 78 I. D. 285

To prove that a discovery of a valuable mineral deposit has been made under the mining laws it is not necessary to show there is an actual profitable mining operation in existence; instead, there must be evidence of the quantity and quality of the mineral deposit within the claim which under known marketing conditions could be sold at a price which would justify reasonably

MINING CLAIMS--Continued

DISCOVERY--Continued

Generally--Continued

expected costs of a mining operation so a prudent man would expect to develop a valuable mine.

In a mining contest, the Government may use an expert witness such as a qualified mining engineer, to establish its case and testify concerning the prudent man test of discovery.

An applicant for a mineral patent must maintain his mining claim in such a condition that the Government may examine his discovery points to verify the existence of the mineral deposit, and the Government's mineral examiner need not clean out or rehabilitate the claimant's discovery points or explore beyond the pits currently exposed.

A mineral patent application is properly rejected and the mining claims properly declared null and void where the Government has shown that a prudent man could not expect to mine a deposit of barite profitably because the barite does not meet market standards, and the contestee's evidence fails to show that all the costs of the mining operation, including milling operations necessary to upgrade the mineral, if possible, to market standards and improvement of a road necessary to haul the material from the claims, would be justified by the expected returns of a reasonably estimated volume of mineral within the known extent of the deposit.

United States v. Howard S. McKenzie, 4 IBLA 97 (Nov. 19, 1971)

Geologic Inference

Geologic inferences may support a classification of land as mineral in character; however, alone they cannot support a determination under the mining laws that a valid discovery of a valuable mineral deposit has been made within a claim as such a determination must be based upon an actual physical exposure of a mineral deposit within the claim.

United States v. Hines Gilbert Gold Mines Company, 1 IBLA 296 (Feb. 25, 1971)

Marketability

To satisfy the requirements for discovery on a placer mining claim located for a common variety of pumiceous material before July 23, 1955, it must by shown that the exposed material could have been removed and marketed at a profit on that date, as well as at the present time; where such a showing is not made, the claim is properly declared null and void.

Where it appears that some material was removed from a mining claim and marketed prior to July 23, 1955, but it also appears that the market for such material terminated before that date, and where there is no positive evidence of the removal thereafter of any significant quantity

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

of material from the claim for purposes other than fill material, it is properly concluded that the material was not marketable on July 23, 1955.

United States v. Paul M. Thomas et al., 1 IBLA 209 (Jan. 12, 1971) 78 I. D. 5

To satisfy the requirements for discovery on a placer mining claim located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit as of that date. Where the evidence shows that there is an abundant supply of similar sand and gravel in the area of the claim, that sand and gravel was being produced and sold in the area on July 23, 1955, and that no sand and gravel had been or was being marketed from the claim as of that date, the fact that the material on the claim is sufficient both as to quantity and quality, as is the abundant supply of similar material found in the area, is insufficient to show that material from this particular claim could have been profitably removed and marketed on July 23, 1955, and the claim is properly declared null and void.

To satisfy the requirement that deposits of minerals of widespread occurrence be "marketable" it is not enough that they are only theoretically capable of being sold but it must be shown that the mineral from the particular deposit could have been extracted, sold, and marketed at a profit.

To hold that a mining claim located for a common variety of sand and gravel prior to July 23, 1955, must be perfected by a discovery (including marketability) made before that date is not to give retrospective application to the act of July 23, 1955, which bars locations thereafter made for common varieties of sand and gravel.

To satisfy the requirements of discovery on a placer mining claim located for sand and gravel prior to July 23, 1955, it must be shown that the deposit could have been extracted, removed, and marketed at a profit as of that date and not as of some prospective date and where claimants fail to make such a showing the claim is properly declared null and void.

United States v. William A. McCall, Sr., The Dredge Corporation, Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Association, Intervenor, 2 IBLA 64 (Mar. 22, 1971) 78 I. D. 71

In order to sustain a placer mining claim located for gypsum, it must be shown that the gypsum within the limits of the claim could have been extracted, removed, and marketed at a profit when the lands embracing the claim were withdrawn as part of a military reservation.

The requirement that deposits of gypsum be marketable at a profit prior to the withdrawal of the lands embracing the claim has not been satisfied where it is clear that no open market for the product existed, no mining operations had been conducted on the claim, no sales of gypsum had been made, and no effort to establish a market for these specific gypsum deposits had been made by the claimants prior to the date of the withdrawal.

United States v. Albert B. Bartlett et al., 2 IBLA 274 (May 13, 1971) 78 I. D. 173

To satisfy the requirements for discovery on a placer claim located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit as of that date. Where the evidence shows that there is an abundant supply of similar sand and gravel in the area of the claim, that sand and gravel was being produced and sold in the area on July 23, 1955, and that no sand and gravel had been or was being marketed from the claim on July 23, 1955, the fact that the material on the claim is sufficient, both as to quantity and quality, as is the abundant supply of similar material in the area, is insufficient to show that material from the particular claim could have been profitably removed and marketed as of July 23, 1955, and the claim is properly declared null and void.

To satisfy the marketability test for minerals of widespread occurrence it is not enough to show that there is a general demand for the type of material in question, but it must be shown that the mineral from the particular deposit could have been extracted, sold, and marketed at a profit.

To satisfy the requirement of discovery on a placer mining claim located for sand and gravel prior to July 23, 1955, it must be shown that the deposit could have been extracted, removed, and marketed at a profit as of that date and not as of some prospective date; where claimants fail to make that showing, the claim is properly declared null and void.

United States v. Clear Gravel Enterprises, Inc., 2 IBLA 285 (May 20, 1971)

To satisfy the requirements for discovery on placer claims located for common varieties of sand and gravel before July 23, 1955, it must be shown that the materials within the limits of the claim could have been extracted, removed, and marketed at a profit as of that date. Where the evidence shows that there is an abundant supply of similar sand and gravel in the area of the claim, and that no sand and gravel had been or was being marketed from the claim on July 23, 1955, the fact that the material on the claim is sufficient, both as to quantity and quality, as is the abundant supply of similar material in the area, is inadequate to show that material from the particular claim could have been

MINING CLAIMS--Continued

DISCOVERY--Continued

Marketability--Continued

profitably removed and marketed as of July 23, 1955, and the claim is properly declared null and void.

To satisfy the requirements of discovery on placer mining claims located for sand and gravel prior to July 23, 1955, it must be shown that the deposits could have been extracted, removed, and marketed at a profit as of that date and not as of some prospective date; where claimant fails to make that showing, the claims are properly declared null and void.

United States v. Isbell Construction Company, 4 IBLA 205 (Dec. 30, 1971) 78 I.D. 385

HEARINGS

It is proper to allow a third party to intervene in a proceeding where an interest of the intervenor may be affected by the outcome of the proceeding.

United States v. William A. McCall, Sr., The Dredge Corporation, Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Association, Intervenor, 2 IBLA 64 (Mar. 22, 1971) 78 I.D. 71

The technical exclusionary rules of evidence applied in court proceedings need not be followed in administrative hearings; therefore, the fact that hearsay evidence, consisting of an assay report, was received by the Hearing Examiner in a Government contest, together with other evidence, is no reason for changing a decision which is sustainable even without such evidence.

United States v. A. P. Jones, 2 IBLA 140 (Apr. 8, 1971)

Evidence tendered on appeal in a mining contest case may not be considered except for the limited purpose of deciding whether a further hearing is warranted, since the record made at the hearing must be the sole basis for decision.

New evidence tendered on appeal is not sufficient to justify further evidentiary proceedings, although it might discredit testimony by government mineral examiners that two of their samples of a placer mining claim were taken to bedrock, where there is no tender of proof showing that the alleged greater mineral values at bedrock actually exist and the record does not show evidence of sufficient gold to warrant a prudent man to anticipate development of a valuable mine.

United States v. Wayne Winters d/b/a Piedras Del Sol Mining Company, 2 IBLA 329 (June 2, 1971) 78 I.D. 193

Where the contestee declines to present any evidence to rebut the contestant's prima facie case, either at the hearing or during a subsequent 30-day period while the record is held open for the receipt of such evidence, and where the contestee likewise fails to avail herself of opportunities provided to present motions for a rehearing and to have the claims reexamined by the government, motions presented on appeal for a reexamination of the claims and for a new hearing will be denied.

United States v. Jimmie (Juanita) P. Laing, 3 IBLA 108 (Aug. 19, 1971)

A decision holding that certain placer mining claims located for silica sands are null and void for lack of a discovery of valuable deposit of mineral will be reversed where a preponderance of the evidence adduced at the contest hearing shows that the sands are of glass quality, that a market for such sands exists in close proximity and that it is reasonable to anticipate that such sands can be beneficiated at a cost which will make them competitive with present suppliers of the existing market.

United States v. Kosanke Sand Corporation, 3 IBLA 189 (Sept. 3, 1971) 78 I.D. 285

LANDS SUBJECT TO

Land in a second form reclamation withdrawal remains open to mineral location.

M. G. Johnson, 2 IBLA 106 (Apr. 5, 1971) 78 I.D. 107

Areas of the National Park System are withdrawn from location, entry and patent under the Mining Laws of the United States unless the language creating the area specifically makes lands within the area subject to the mining laws.

Mining in National Park Service Areas, M-36838 (Nov. 16, 1971) 78 I.D. 352

Absent a statutory direction to the contrary, lands acquired by purchase do not thereby acquire a public land status and are therefore not subject to the operation of the United States mining laws.

The Act of August 10, 1939, 53 Stat. 1347, adding certain lands to the Kaniksu National Forest, constitutes such a statutory direction.

Mining claims located on lands purchased by the United States under the Act of April 8, 1935, 49 Stat. 115, and added to the Kaniksu National Forest by the Act of August 10, 1939, 53 Stat. 1347, may not be declared null and void ab initio, but the mining claimants must be afforded notice and an opportunity for hearing before the claims are subject to cancellation.

Ernest Smith, Ruth Smith, 4 IBLA 192 (Dec. 27, 1971) 78 I.D. 368

MINING CLAIMS--Continued

LOCATION

To hold that a mining claim located for a common variety of sand and gravel prior to July 23, 1955, must be perfected by a discovery (including marketability) made before that date is not to give retrospective application to the act of July 23, 1955, which bars locations thereafter made for common varieties of sand and gravel.

United States v. William A. McCall, Sr., The Dredge Corporation, Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Association, Intervenor, 2 IBLA 64 (Mar. 22, 1971) 78 I. D. 71

PATENT

To be entitled to a patent to mining claims on public land withdrawn from entry subsequent to the original location, an applicant other than the original locator must show not only that the claims were in fact located prior to the date of withdrawal and that the lands claimed are those originally located, but also that he is the successor in interest to and has an unbroken chain of title from the original locator.

Ralph Page, 2 IBLA 262 (May 11, 1971)
78 I. D. 167

A mineral patent application is properly rejected and the mining claims properly declared null and void where the Government has shown that a prudent man could not expect to mine a deposit of barite profitably because the barite does not meet market standards, and the contestee's evidence fails to show that all the costs of the mining operation, including milling operations necessary to upgrade the mineral, if possible, to market standards and improvement of a road necessary to haul the material from the claims, would be justified by the expected returns of a reasonably estimated volume of mineral within the known extent of the deposit.

United States v. Howard S. McKenzie, 4 IBLA 97 (Nov. 19, 1971)

PATENT INPROVEMENTS

An applicant for a mineral patent must maintain his mining claim in such a condition that the Government may examine his discovery points to verify the existence of the mineral deposit, and the Government's mineral examiner need not clean out or rehabilitate the claimant's discovery points or explore beyond the pits currently exposed.

United States v. Howard S. McKenzie, 4 IBLA 97 (Nov. 19, 1971)

SURFACE USES

In a proceeding under sec. 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the surface resources of a mining claim prior to patent, the Government has no obligation to prove that the claim contains either surface resources and/or necessary access routes, but only to present a prima facie case that a

MINING CLAIMS--Continued

SURFACE USES--Continued

discovery did not exist on the claim as of July 23, 1955, or that one does not exist at the present time. When the Government makes such a prima facie case it will prevail unless the claimant overcomes the Government's case by a preponderance of the evidence.

In a proceeding under sec. 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the surface resources of a mining claim prior to patent, the Government will prevail if it is shown that a discovery perhaps existed prior to the date of the act but it is determined there was not a discovery of a valuable mineral deposit as of the date of the act, and the Government will also prevail if it is shown that a discovery perhaps existed prior to, or as of, the date of the act but it is determined at the time of inquiry that no discovery exists because the evidence of mineralization will no longer justify the expenditure necessary to develop a mine.

United States v. A. P. Jones, 2 IBLA 140 (Apr. 8, 1971)

Where after a mineral claimant has filed a verified statement pursuant to section 5 of the Surface Resources Act, the mining claim is declared null and void in a separate contest proceeding, the right of the claimant to the surface resources is extinguished, and there is no necessity for a separate proceeding under section 5 of the act.

United States v. J. S. Devenny, 3 IBLA 185 (Sept. 3, 1971)

TITLE

Where the title asserted by an applicant for a patent to mining claims is based on adverse possession commencing after the lands included in the claims were withdrawn from entry, such title is of independent origin and relates back only to the beginning of the adverse holding and does not transfer to the applicant the title of the former owner. Accordingly, the applicant does not have an unbroken chain of title from the original locator and any rights obtained by his adverse possession are defeated by the prior withdrawal.

Ralph Page, 2 IBLA 262 (May 11, 1971)
78 I. D. 167

WITHDRAWN LANDS

To be entitled to a patent to mining claims on public land withdrawn from entry subsequent to the original location, an applicant other than the original locator must show not only that the claims were in fact located prior to the date of withdrawal and that the lands claimed are those originally located, but also that he is the successor in interest to and has an unbroken chain of title from the original locator.

Where the title asserted by an applicant for a patent to mining claims is based on adverse possession

MINING CLAIMS--Continued

WITHDRAWN LANDS--Continued

commencing after the lands included in the claims were withdrawn from entry, such title is of independent origin and relates back only to the beginning of the adverse holding and does not transfer to the applicant the title of the former owner. Accordingly, the applicant does not have an unbroken chain of title from the original locator and any rights obtained by his adverse possession are defeated by the prior withdrawal.

Ralph Page, 2 IBLA 262 (May 11. 1971)
78 I.D. 167

Areas of the National Park System are withdrawn from location, entry and patent under the Mining Laws of the United States unless the language creating the area specifically makes lands within the area subject to the mining laws.

Mining in National Park Service Areas, M-36838
(Nov. 16, 1971) 78 I.D. 352

NATIONAL PARK SERVICE AREAS

GENERALLY

Areas of the National Park System are withdrawn from location, entry and patent under the Mining Laws of the United States unless the language creating the area specifically makes lands within the area subject to the mining laws.

Mining in National Park Service Areas, M-36838
(Nov. 16, 1971) 78 I.D. 352

LAND

Use

Areas of the National Park System are withdrawn from location, entry and patent under the Mining Laws of the United States unless the language creating the area specifically makes lands within the area subject to the Mining laws.

Mining in National Park Service Areas, M-36838
(Nov. 16, 1971) 78 I.D. 352

NAVAL PETROLEUM RESERVES

Lands within Naval Petroleum Reserve No. 4 in Alaska withdrawn from entry by Public Land Order No. 82 were expressly precluded from being opened to entry by Public Land Order No. 2215, which revoked Public Land Order No. 82; therefore, the withdrawal by Public Land Order No. 82 remains in effect as to such lands and precludes the allowance of native allotment applications for such lands unless the lands applied for were otherwise excepted from the withdrawal or unless rights had attached.

By an agreement between the Departments of Interior and Navy, no grants of surface interests in lands within Naval Petroleum Reserve No. 4 in Alaska may be made by the Bureau of Land Management without prior concurrence of the Office of Naval Petroleum

NAVAL PETROLEUM RESERVES--Continued

Reserves and subject to such terms and conditions as that office may specify to protect the petroleum reserves.

The strong Congressional policy of protecting the naval petroleum reserves compels the rejection of native allotment applications for lands within Naval Petroleum Reserve No. 4 in Alaska in the exercise of the Secretary of the Interior's discretion under the Alaska Native Allotment Act, regardless of whether asserted inchoate occupancy preference rights under that Act are deemed unaffected or precluded by the reserve and subsequent withdrawals.

Terza Hopson et al., 3 IBLA 134 (Aug. 20, 1971)

NOTICE

A document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

James W. Heyer, Appellant, Ray Newman, Edward W. Halsey, Harold L. Anderson, Appellees, 2 IBLA 318 (June 2, 1971)

A document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered registered or certified letter, such constructive service being equivalent in legal effect to actual service of the document.

Beryl Shurtz, 4 IBLA 66 (Nov. 8, 1971)

OIL AND GAS LEASES

GENERALLY

Where the United States has paid for land and claimed title to that land for almost 40 years, but title has not been perfected, oil and gas leases may be issued on that land if the public interest and fairness to the offeror warrant such action.

George E. Conley, 1 IBLA 223 (Jan. 13, 1971)

Where a public land order provides that an area of public land will not be available for the filing of noncompetitive oil and gas lease offers until specific procedures, including the preparation of certain maps and publication of certain notices in the Federal Register, have been followed, and the procedures mentioned in the order have not been implemented, the land is not subject to oil and gas leasing and offers for it are properly rejected.

Carlson Oil Company, Inc., 2 IBLA 378
(June 25, 1971)

The Secretary, in the exercise of his discretionary authority respecting issuance of oil and gas leases, may require acceptance of special stipulations as a condition

OIL AND GAS LEASES--Continued

GENERALLY--Continued

precedent to issuance of such a lease, where the stipulations are designed to protect the soil and surface resources under his jurisdiction and do not interfere unreasonably with the lessee's rights of enjoyment.

It is proper to require one making an oil and gas lease offer to consent to stipulations deemed necessary to protect the land and surface resources from undue damage by exploratory operations, as a condition precedent to issuance of the lease, pursuant to the mandate of the Congress expressed in the National Environmental Policy Act of 1969.

John Oakason, 3 IBLA 148 (Aug. 26, 1971)

An application to consolidate two noncompetitive oil and gas leases, which were originally one lease held by the applicant, will be denied where the primary result of the consolidation would be to reduce drilling requirements under the leases and where it does not appear that the interests of the Federal Government will be benefited.

Duncan Miller, 3 IBLA 338 (Oct. 22, 1971)

The Secretary of the Interior, in the exercise of his discretionary authority respecting issuance of oil and gas leases, may require acceptance of special stipulations as a condition precedent to issuance of such a lease, where such stipulations are designed to protect the soil and surface resources and do not unreasonably interfere with the lessee's rights of enjoyment.

It is proper to require one making an oil and gas lease offer to consent to stipulations deemed necessary to protect the land and surface resources from undue damage by exploratory operations, as a condition precedent to issuance of the lease, pursuant to the mandate of the Congress expressed in the National Environmental Policy Act of 1969.

An applicant for a noncompetitive oil and gas lease on lands included within the oil shale areas of Colorado, Utah and Wyoming, as defined in the Secretary's Order of June 1, 1971, is properly required to accept, in writing, the special stipulations required by that order or face rejection of his offer.

Quantex Corporation et al., 4 IBLA 31 (Oct. 28, 1971) 78 I.D. 317

The Secretary, in the exercise of his discretionary authority respecting issuance of oil and gas leases, may require acceptance of special stipulations as a condition precedent to issuance of such a lease, where the stipulations are designed to protect the soil and surface resources and Indian archaeological artifacts under his jurisdiction and do not interfere unreasonably with the lessee's rights of enjoyment.

John Oakason, 4 IBLA 79 (Nov. 12, 1971)

The Board adheres to its decision in Quantex Corporation et al., 4 IBLA 31, 78 I.D. 317 (October 28, 1971), that applicants for oil and gas leases must give written acceptance

OIL AND GAS LEASES--Continued

GENERALLY--Continued

of reasonable special stipulations requested by the Bureau of Land Management or by the Forest Service relating to protection of the land and surface resources under their respective jurisdictions, and to stipulations governing use of lands in the oil shale areas of Colorado, Utah and Wyoming, as conditions precedent to issuance of noncompetitive public domain oil and gas leases.

Benjamin T. Franklin et al., 4 IBLA 130 (Nov. 30, 1971)

The Board adheres to its decision in Quantex Corporation et al., 4 IBLA 31, 78 I.D. 317 (October 28, 1971), that applicants for oil and gas leases must give written acceptance of reasonable special stipulations requested by the Bureau of Land Management relating to protection of the land and surface resources, and to stipulations governing use of land in the oil shale areas of Colorado, Utah and Wyoming, as conditions precedent to issuance of noncompetitive public domain oil and gas leases.

G. W. Anderson, 4 IBLA 150 (Dec. 15, 1971)

The Board adheres to its decision in Quantex Corporation et al., 4 IBLA 31, 78 I.D. 317 (October 28, 1971), that applicants for oil and gas leases must give written acceptance of reasonable special stipulations requested by the Bureau of Land Management relating to protection of the land and surface resources as a condition precedent to issuance of noncompetitive public domain oil and gas leases.

Ida Lee Anderson, 4 IBLA 147 (Dec. 15, 1971)

ACQUIRED LANDS LEASES

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the lands as a condition to the issuance of the lease; the applicant, rather than this Department, must seek any modification or clarification of the stipulations from the agency.

Duncan Miller, 1 IBLA 266 (Feb. 9, 1971)

An acquired lands oil and gas lease offer filed July 1, 1966, is properly rejected as being prematurely filed, where oil and gas rights in the acquired lands were reserved in the grantor "for a primary period ending July 1, 1966," as that provision is interpreted as reserving those rights in the grantor until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

Georgette B. Lee, 1 IBLA 263 (Feb. 15, 1971)

The rejection of an acquired lands oil and gas lease offer will be affirmed where the deed to the United States reserves minerals to the grantor county and the appellant makes only general, unsupported assertions that the county lacked authority to reserve the minerals.

J. W. McTiernan, 3 IBLA 19 (July 15, 1971)

OIL AND GAS LEASES--Continued

ACQUIRED LANDS LEASES--Continued

Where the mineral interest of the United States in lands described in a noncompetitive oil and gas lease offer for acquired lands proves to be larger or smaller than the interest stated, the rentals payable by the lessee shall be increased or decreased proportionately. If the federal mineral interest is larger than the stated interest and the advance rental is deficient by more than 10 percent, the lease will not issue. However, if the deficiency is remedied by payment of the additional rental and no offers are filed in the interim, the offer earns priority from the date the deficiency is remedied.

Irwin Rubenstein, 3 IBLA 250 (Sept. 21, 1971)

Where jurisdiction over oil and gas deposits in lands acquired by the United States has been transferred to the Secretary of the Interior, and the land is later declared surplus pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, such oil and gas deposits are not subject to leasing under the Mineral Leasing Act for Acquired Lands because that Act excludes from leasing oil and gas deposits in lands reported as surplus.

Robert P. Ryan, Robert Dooley, Judith Walker, 4 IBLA 181 (Dec. 23, 1971)

Where during the pendency of an acquired lands oil and gas lease offer, the lands in issue, including all minerals therein, are conveyed out of federal ownership, the jurisdiction of the Department ceases over the mineral deposits therein and the offer must be rejected.

Frederick G. Kuhner, 4 IBLA 185 (Dec. 27, 1971)

ACREAGE LIMITATIONS

Under section 21 of the Mineral Leasing Act of 1920, as amended, a person, association, or corporation may take and hold directly only one oil shale lease, which shall not exceed 5,120 acres. If that lease should expire or terminate for any reason, or be transferred, the lessee would not, on account of the issuance of the prior lease, be barred from acquiring another oil shale lease.

Sections 21 and 27(e)(1) of the Mineral Leasing Act of 1920, as amended, must be read together, and when so construed, they permit a person, association, or corporation to take, hold, own, or control indirect interests in oil shale leases as a member each holding an oil shale lease, if those interests, together with acreage directly held, owned, or controlled under an oil shale lease, do not exceed in the aggregate 5,120 acres.

Under the excepting clause of section 27(e)(1) of the Mineral Leasing Act of 1920, as amended, where a person is the beneficial owner of 10 percent or less of the stock or other instruments of ownership or control of an association or corporation holding

OIL AND GAS LEASES--Continued

ACREAGE LIMITATIONS--Continued

an oil shale lease, that indirect interest would not be chargeable against his aggregate allowable oil shale lease acreage of 5,120 acres.

Limitations on Oil Shale Lease Holdings, M-36843 (Nov. 12, 1971)

APPLICATIONS

Where an applicant is to be deprived of a statutory right because of his failure to comply with the requirements of a regulation, that regulation should be so clearly set forth that there is no reasonable basis for noncompliance.

Georgette B. Lee et al., 3 IBLA 272 (Sept. 30, 1971)

Generally

The United States does not make any warranty of title to oil and gas deposits when it issues an oil and gas lease and it assumes no obligation to defend validity of lease against prior claims.

George E. Conley, 1 IBLA 223 (Jan. 13, 1971)

Land included in an outstanding oil and gas lease is not available for leasing to others and an application filed for such land must be rejected whether or not the outstanding lease was properly issued.

George E. Conley, 1 IBLA 227 (Jan. 13, 1971)

Unless appropriate reference is made to a previous filing of such information, offers by corporations to lease for oil and gas will be rejected for failure to include statements of corporate qualifications as required by regulation.

Love Enterprises, 1 IBLA 248 (Jan. 28, 1971)

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the lands as a condition to the issuance of the lease; the applicant, rather than this Department, must seek any modification or clarification of the stipulations from the agency.

Duncan Miller, 1 IBLA 266 (Feb. 9, 1971)

An acquired lands oil and gas lease offer filed July 1, 1966, is properly rejected as being prematurely filed, where oil and gas rights in the acquired lands were reserved in the grantor "for a primary period ending July 1, 1966," as that provision is interpreted as reserving those rights in the grantor until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

Georgette B. Lee, 1 IBLA 263 (Feb. 15, 1971)

Unless accompanied by the required information relating to the qualifications of the partnership, or

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

by a reference to a previous filing of such information, an oil and gas lease offer by a partnership must be rejected.

J-S Enterprises, Ltd., 2 IBLA 9 (Feb. 26, 1971)

An oil and gas lease offer is properly rejected where it is filed in the name of a corporation and it is not accompanied by the statement as to corporate qualifications required by 43 CFR 3102. 4-1, nor by a reference to the serial numbers of case records in which such showings have previously been filed.

Pan Ocean Oil Corporation, 2 IBLA 156 (Apr. 12, 1971)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statements of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time prescribed, strict compliance with the Department's regulations may not be waived to favor an applicant who pleads ignorance of the law or inexperience in oil and gas leasing.

Richard Hubbard, 2 IBLA 270 (May 11, 1971) 78 I.D. 170

An oil and gas lease offer filed by a corporation must be rejected where it is not accompanied by a statement of corporate qualifications, or by a reference by serial number to a record in which such statement has previously been filed.

Chandler & Associates, Inc., 2 IBLA 281 (May 18, 1971)

Where the appellant fails to show error in the decision by the Bureau of Land Management land office holding that an oil and gas lease offer was not correctly filed, and no error appears, the decision will be affirmed.

James W. Heyer, Appellant, Ray Newman, Edward W. Halsey, Harold L. Anderson, Appellees, 2 IBLA 318 (June 2, 1971)

An oil and gas lease offer filed under the simultaneous filing procedure in 43 CFR 3123.9 (1969) (now 43 CFR 3112 (1971)), accompanied with a personal check for the advance rental payment, is properly rejected and excluded from the drawing for noncompliance with subsection 3112.2-1(a)(2) of that regulation, and the offeror's act of typing the words "MONEY ORDER" on the check does not render the check a money order within the meaning of that regulation.

James W. McDade, 2 IBLA 373 (June 23, 1971)

Where a public land order provides that an area of public land will not be available for the filing of noncompetitive oil and gas lease offers until specific procedures, including the preparation of

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

certain maps and publication of certain notices in the Federal Register, have been followed, and the procedures mentioned in the order have not been implemented, the land is not subject to oil and gas leasing and offers for it are properly rejected.

Carlson Oil Company, Inc., 2 IBLA 378 (June 25, 1971)

A protest, charging failure of the Bureau of Land Management to reject an oil and gas lease offer because the land is not available, is properly rejected where the record shows that action on the lease offer is suspended pursuant to the terms set forth in Public Land Order 4582, as extended by PLO 4962 and PLO 5081.

A noncompetitive oil and gas lease offer filed for unleased lands in Alaska before January 19, 1969, is properly suspended from further adjudication under the provisions of Public Land Order 4582, as extended by PLO 4962 and PLO 5081, and will not be rejected until determination of the availability of the land to such noncompetitive oil and gas lease offer is finally made after expiration of the Public Land Order, unless the offer is recalled previously by the offeror.

George E. Utermohle, Jr., 3 IBLA 94 (Aug. 13, 1971)

Where the mineral interest of the United States in lands described in a noncompetitive oil and gas lease offer for acquired lands proves to be larger or smaller than the interest stated, the rentals payable by the lessee shall be increased or decreased proportionately. If the federal mineral interest is larger than the stated interest and the advance rental is deficient by more than 10 percent, the lease will not issue. However, if the deficiency is remedied by payment of the additional rental and no offers are filed in the interim, the offer earns priority from the date the deficiency is remedied.

Irwin Rubenstein, 3 IBLA 250 (Sept. 21, 1971)

An oil and gas lease offeror may properly participate in a simultaneous oil and gas drawing under 43 CFR 3112 (1971) through a filing service if there is no scheme, plan or agreement between the parties wherein the service obtains an "interest" in the resultant lease as defined in 43 CFR 3100.0-5 (b), and in the absence of any other demonstrable legal or regulatory impediment.

A protest of a successful drawee's offer in a simultaneous drawing, for the reason that the advance rental payment required under 43 CFR 3112.2-1 (a) was submitted in the form of a corporate or other private commercial money order, is properly dismissed where it is determined that such

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Generally--Continued

a money order is an acceptable remittance within the meaning of the term "money order" as used in the regulation.

Georgette B. Lee et al., 3 IBLA 272 (Sept. 30, 1971)

An oil and gas offer for lands covered by an oil and gas lease in its extended term because of partial assignments must be rejected, whether the extension is valid or not, because such lands are not open to filing until the cancellation or termination of the lease has been noted on the land office records.

Leslie C. Jonkey, 3 IBLA 280 (Sept. 30, 1971)

An oil and gas lease offer filed by a corporation must be rejected where it is not accompanied by a statement of corporate qualifications, or by a reference by serial number to a record in which such statement has previously been filed, even though the corporation formerly held a lease covering the same lands, which lease terminated by operation of law for failure to pay rent when due.

Wyoming Oil & Development Co., Inc., d/b/a Rocky Mountain Resources, Inc., 4 IBLA 94 (Nov. 17, 1971)

Regulations should be so clear that there is no basis for an oil and gas lease applicant's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease.

Mary I. Arata, 4 IBLA 201 (Dec. 30, 1971)
78 I.D.397

Amendments

Where the mineral interest of the United States in lands described in a noncompetitive oil and gas lease offer for acquired lands proves to be larger or smaller than the interest stated, the rentals payable by the lessee shall be increased or decreased proportionately. If the federal mineral interest is larger than the stated interest and the advance rental is deficient by more than 10 percent, the lease will not issue. However, if the deficiency is remedied by payment of the additional rental and no offers are filed in the interim, the offer earns priority from the date the deficiency is remedied.

Irwin Rubenstein, 3 IBLA 250 (Sept. 21, 1971)

Where an over-the-counter noncompetitive oil and gas offer is filed without showing whether the applicant is the "sole party in interest", and such defect is remedied prior to the filing of any junior offer, the first offer may be considered with priority as of the date the curative data is filed.

William B. Collins, 4 IBLA 8 (Oct. 26, 1971)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Description

When land which was inadequately described in an oil and gas lease offer and in the lease thereafter issued is adequately identified prior to the filing of a conflicting offer after the lease issued, the land considered to be in an outstanding oil and gas lease is not available for leasing to others.

George E. Conley, 1 IBLA 227 (Jan. 13, 1971)

Where the mineral interest of the United States in lands described in a noncompetitive oil and gas lease offer for acquired lands proves to be larger or smaller than the interest stated, the rentals payable by the lessee shall be increased or decreased proportionately. If the federal mineral interest is larger than the stated interest and the advance rental is deficient by more than 10 percent, the lease will not issue. However, if the deficiency is remedied by payment of the additional rental and no offers are filed in the interim, the offer earns priority from the date the deficiency is remedied.

Irwin Rubenstein, 3 IBLA 250 (Sept. 21, 1971)

Drawings

An oil and gas lease offer is properly rejected where the offeror is acting as a trustee and the entry card offer is not accompanied by the statements required by the pertinent regulation.

Lyle Quintana Johnson et al., 1 IBLA 245 (Jan. 28, 1971)

A protest against omission of a drawing entry card from a drawing to determine priority of oil and gas lease offers submitted in response to a published list of lands available for leasing by the simultaneous filing procedure, and against issuance of a lease to the offeror gaining priority therein, is properly dismissed where it is not shown that the omitted offer was correctly filed.

James W. Heyer, Appellant, Ray Newman, Edward W. Halsey, Harold L. Anderson, Appellees, 2 IBLA 318 (June 2, 1971)

A protest against the result of a drawing of simultaneously filed oil and gas lease offers which charges collusion and other wrongdoing and implies a violation of the regulation requiring disclosure of all parties in interest is properly dismissed where the protestant fails to establish these charges or that the successful offer was in fact defective. A suggestion of the possibility of a violation of a regulation is not sufficient; a protestant must present competent proof of such violation, absent which a protest is properly rejected.

Georgette B. Lee and James W. McDade, 3 IBLA 171 (Aug. 31, 1971)

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Filing

An oil and gas lease offer filed by a corporation must be rejected where it is not accompanied by a statement of corporate qualifications, or by a reference by serial number to a record in which such statement has previously been filed, even though the corporation formerly held a lease covering the same lands, which lease terminated by operation of law for failure to pay rent when due.

Wyoming Oil & Development Co., Inc., d/b/a Rocky Mountain Resources, Inc., 4 IBLA 94 (Nov. 17, 1971)

Sole Party in Interest

Where an oil and gas lease offer, filed on a drawing entry card in a simultaneous filing procedure, contains the name of a party in interest other than the offeror, and the required statement of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party to hold such interest are not filed within the time allowed by the Department's regulations, the offer is properly rejected.

J-S Enterprises, Ltd., 2 IBLA 9 (Feb. 26, 1971)

Where oil and gas lease offers filed on drawing entry cards in a simultaneous filing procedure contain the names of additional parties in interest, and the required statements of interest, copies or explanation of the agreements between the parties, and evidence of qualifications of the additional parties are not filed within the time allowed by the Department's regulations, the offers are properly rejected.

Gill Oil Company, 2 IBLA 18 (Mar. 1, 1971)

Where an oil and gas lease offer, filed on a drawing entry card in a simultaneous filing procedure, contains the name of a party in interest other than the offeror, and the required statement of interest, copy of explanation of the agreement between the parties, and evidence of the qualifications of the additional party to hold such interest are not filed within the time allowed by the Department's regulations, the offer is properly rejected even though the offeror's noncompliance is due entirely to his misunderstanding of the applicable filing procedures.

Leonard V. Chew, 2 IBLA 232 (Apr. 30, 1971)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statements of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time prescribed by the Department's regulations, the offer must be rejected.

Richard Hubbard, 2 IBLA 270 (May 11, 1971)

78 I.D. 170

OIL AND GAS LEASES--Continued

APPLICATIONS--Continued

Sole Party in Interest--Continued

Where an over-the-counter noncompetitive oil and gas offer is filed without showing whether the applicant is the "sole party in interest", and such defect is remedied prior to the filing of any junior offer, the first offer may be considered with priority as of the date the curative data is filed.

William B. Collins, 4 IBLA 8 (Oct. 26, 1971)

Where an oil and gas lease offer filed on a drawing entry card in a simultaneous filing procedure contains the name of an additional party in interest, and the required statements of interest, copy or explanation of the agreement between the parties, and evidence of the qualifications of the additional party are not filed within the time prescribed by the Department's regulations, the offer must be rejected.

Thomas H. Mullinax, 4 IBLA 114 (Nov. 24, 1971)

ASSIGNMENTS OR TRANSFERS

An instrument in which an assignor agrees to "grant, sell, assign and convey the exclusive right and privilege of testing and developing" is an operating agreement rather than an assignment of record title and creates no contractual relationship between the United States and the assignee.

Harry L. Bigbee, 2 IBLA 23 (Mar. 1, 1971)

Where a lease was issued prior to September 2, 1960, and a portion of the lands included in the lease is assigned during the single 5-year extension (formerly allowed under section 17 of the Mineral Leasing Act), then both the assigned portion and the retained portion continue in full force and effect for a minimum period of two years. Thus the 2-year extension may continue the leases beyond the end of the 5-year extension of the original lease.

Leslie C. Jonkey, 3 IBLA 280 (Sept. 30, 1971)

CANCELLATION

An oil and gas lease issued to an offeror who has indicated on his drawing entry lease offer that another party has an interest therein will be canceled if the written statements of interest required by regulation are not submitted within the prescribed 15 days after the date of the filing of the offer.

Dominic J. Repici et al., 2 IBLA 14 (Mar. 1, 1971).

COMPETITIVE LEASES

All lands determined by a finding of the Geological Survey to be within the known geologic structure of a producing oil or gas field may only be leased to the public through competitive bidding.

Duncan Miller, 2 IBLA 254 (May 10, 1971)

OIL AND GAS LEASES--Continued

CONSENT OF AGENCY

An applicant for an acquired lands oil and gas lease must execute any special stipulations required by the agency administering the lands as a condition to the issuance of the lease; the applicant, rather than this Department, must seek any modification or clarification of the stipulations from the agency.

Duncan Miller, 1 IBLA 266 (Feb. 9, 1971)

An applicant for a noncompetitive public land oil and gas lease of lands being administered by the Forest Service is properly required to file a written consent to stipulations requested by that agency as a condition precedent to issuance of the lease, or face rejection of his offer, where the stipulations are not unreasonable and will not seriously deter operations for development of the leased oil and gas deposits.

Quantex Corporation et al., 4 IBLA 31 (Oct. 28, 1971) 78 I.D. 317

The Board adheres to its decision in Quantex Corporation et al., 4 IBLA 31, 78 I.D. 317 (October 28, 1971), that applicants for oil and gas leases must give written acceptance of reasonable special stipulations requested by the Bureau of Land Management or by the Forest Service relating to protection of the land and surface resources under their respective jurisdictions, and to stipulations governing use of lands in the oil shale areas of Colorado, Utah and Wyoming, as conditions precedent to issuance of noncompetitive public domain oil and gas leases.

Benjamin T. Franklin et al., 4 IBLA 130 (Nov. 30 1971)

An acquired lands oil and gas lease offer must be rejected when the agency having jurisdiction over the land does not consent to the issuance by this Department of a lease.

Frederick G. Kuhner, 4 IBLA 185 (Dec. 27, 1971)

EXTENSIONS

Where a lease was issued prior to September 2, 1960, and a portion of the lands included in the lease is assigned during the single 5-year extension (formerly allowed under section 17 of the Mineral Leasing Act), then both the assigned portion and the retained portion continue in full force and effect for a minimum period of two years. Thus the 2-year extension may continue the leases beyond the end of the 5-year extension of the original lease.

An oil and gas offer for lands covered by an oil and gas lease in its extended term because of partial assignments must be rejected, whether the extension is valid or not, because such lands are not open to filing until the cancellation or termination of the lease has been noted on the land office records.

Leslie C. Jonkey, 3 IBLA 280 (Sept. 30, 1971)

OIL AND GAS LEASES--Continued

FIRST QUALIFIED APPLICANT

An oil and gas lease offer is properly rejected where the offeror is acting as a trustee and the entry card offer is not accompanied by the statements required by the pertinent regulation.

Lyle Quintana Johnson et al., 1 IBLA 245 (Jan. 28, 1971)

FUTURE AND FRACTIONAL INTEREST LEASES

Where applications for future interest oil and gas leases filed more than one year prior to the date of vesting in the United States of the present possessory interest in the minerals are not accompanied by a showing as to the citizenship of the applicants, but such showing is later made, the applicants are otherwise qualified to receive such leases, the omission does not violate a statutory provision, no third party rights are involved, and acceptance of the supplemental showing will not unduly interfere with the orderly conduct of business, the date of the applications will remain that on which they were first filed.

Frank B. Baird, Jr. et al., 2 IBLA 51 (Mar. 8, 1971)

Where the mineral interest of the United States in lands described in a noncompetitive oil and gas lease offer for acquired lands proves to be larger or smaller than the interest stated, the rentals payable by the lessee shall be increased or decreased proportionately. If the federal mineral interest is larger than the stated interest and the advance rental is deficient by more than 10 percent, the lease will not issue. However, if the deficiency is remedied by payment of the additional rental and no offers are filed in the interim, the offer earns priority from the date the deficiency is remedied.

Irwin Rubenstein, 3 IBLA 250 (Sept. 21, 1971)

KNOWN GEOLOGICAL STRUCTURE

One who attacks a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing.

All lands determined by a finding of the Geological Survey to be within the known geologic structure of a producing oil or gas field may only be leased to the public through competitive bidding.

Duncan Miller, 2 IBLA 254 (May 10, 1971)

Land which is within a known geologic structure of a producing oil or gas field may not be leased noncompetitively for oil or gas under the Mineral Leasing Act, even though an offer was filed before the land was considered to be within the structure, and the offer must be rejected for this reason.

OIL AND GAS LEASES--Continued

KNOWN GEOLOGICAL STRUCTURE--Continued

Where the Geological Survey has determined that a tract of land is in an area which is considered to be favorable for gas production and has declared the tract to be within a known geologic structure of a producing oil or gas field, and where an appellant does not furnish any evidence to demonstrate that this determination is erroneous, the lands may not be leased noncompetitively for oil or gas under the Mineral Leasing Act.

F. William Johnson, Jr., 3 IBLA 232 (Sept. 10, 1971)

Noncompetitive offers to lease certain lands for oil and gas must be rejected where after the filing of the offers the land is determined to be within the known geologic structure of a producing oil or gas field, even though such offers may have been conditionally accepted prior to the inclusion of land within the limits of the geologic structure.

James W. McDade, 3 IBLA 226 (Sept. 10, 1971)

The Geological Survey's definition of the known geologic structure of a producing oil or gas field will not be disturbed in the absence of a clear and definite showing that it was improperly made.

The practice of placing all of a smallest legal subdivision into the known geologic structure of a producing oil and gas field when any part of it is determined to be within one is administratively sound and will be continued.

Charles J. Babington and Joe S. Sheldon, Jr. 4 IBLA 43 (Oct. 29, 1971)

LANDS SUBJECT TO

Land included in an outstanding oil and gas lease is not available for leasing to others and an application filed for such land must be rejected whether or not the outstanding lease was properly issued.

When land which was inadequately described in an oil and gas lease offer and in the lease thereafter issued is adequately identified prior to the filing of a conflicting offer after the lease issued, the land considered to be in an outstanding oil and gas lease is not available for leasing to others.

George E. Conley, 1 IBLA 227 (Jan. 13, 1971)

An acquired lands oil and gas lease offer filed July 1, 1966, is properly rejected as being prematurely filed, where oil and gas rights in the acquired lands were reserved in the grantor "for a primary period ending July 1, 1966," as that provision is interpreted as reserving those rights in the grantor until the last moment of July 1, 1966, with title vesting in the United States the first moment of July 2, 1966.

Georgette B. Lee, 1 IBLA 263 (Feb. 15, 1971)

OIL AND GAS LEASES--Continued

LANDS SUBJECT TO--Continued

Where a public land order provides that an area of public land will not be available for the filing of noncompetitive oil and gas lease offers until specific procedures, including the preparation of certain maps and publication of certain notices in the Federal Register, have been followed, and the procedures mentioned in the order have not been implemented, the land is not subject to oil and gas leasing and offers for it are properly rejected.

Carlson Oil Company, Inc., 2 IBLA 378 (June 25, 1971)

Tidelands are not subject to leasing for oil and gas under the Mineral Leasing Act.

An oil and gas lease offer is properly rejected for lands in an existing lease when the offer was filed, regardless of whether the lease is void, voidable, or valid.

Sarah Ann Christie, 3 IBLA 7 (July 6, 1971)

An oil and gas offer for lands covered by an oil and gas lease in its extended term because of partial assignments must be rejected, whether the extension is valid or not, because such lands are not open to filing until the cancellation or termination of the lease has been noted on the land office records.

Leslie C. Jonkey, 3 IBLA 280 (Sept. 30, 1971)

The Secretary of the Interior has authority under the Act of May 21, 1930, to dispose of deposits of oil and gas underlying the right-of-way granted to the Northern Pacific Railroad Company pursuant to the Act of July 2, 1864, 13 Stat. 367, even though the lands traversed by the right-of-way were later patented under the Act of May 20, 1862, 43 U.S.C. § 161 (1964).

George W. Zarak et al., Cardinal Petroleum Company, 4 IBLA 82 (Nov. 10, 1971)

Where during the pendency of an acquired lands oil and gas lease offer, the lands in issue, including all minerals therein, are conveyed out of federal ownership, the jurisdiction of the Department ceases over the mineral deposits therein and the offer must be rejected.

Frederick C. Kuhner, 4 IBLA 185 (Dec. 27, 1971)

NONCOMPETITIVE LEASES

An oil and gas lease offer is properly rejected where it is filed in the name of a corporation and it is not accompanied by the statement as to corporate qualifications required by 43 CFR 3102.4-1, nor by a reference to the serial numbers of case records in which such showings have previously been filed.

Where lands are made available to the simultaneous filing of offers for oil and gas leasing, and the offer first drawn is properly disqualified for noncompliance with the governing regulations,

OIL AND GAS LEASES--Continued

NONCOMPETITIVE LEASES--Continued

later compliance will not entitle the offer to be reinstated and to earn priority from the date of such compliance.

Pan Ocean Oil Corporation, 2 IBLA 156 (Apr. 12, 1971)

The validity of each oil and gas lease offer filed must be determined upon its own merits, and a deficiency in the rental remittance filed with one lease offer cannot be cured by an excess remittance filed with another lease offer.

A drawing entry card lease offer for a noncompetitive oil and gas lease is properly rejected where the offeror fails to tender the full first year's rental with the offer and the amount of rental tendered is deficient by more than ten percent of the proper amount due.

Duncan Miller, 2 IBLA 225 (Apr. 23, 1971)

Land which is within a known geologic structure of a producing oil or gas field may not be leased noncompetitively for oil or gas under the Mineral Leasing Act, even though an offer was filed before the land was considered to be within the structure, and the offer must be rejected for this reason.

F. William Johnson, Jr., 3 IBLA 232 (Sept. 10, 1971)

Noncompetitive offers to lease certain lands for oil and gas must be rejected where after the filing of the offers the land is determined to be within the known geologic structure of a producing oil or gas field, even though such offers may have been conditionally accepted prior to the inclusion of land within the limits of the geologic structure.

James W. McDade, 3 IBLA 226 (Sept. 10, 1971)

Where the mineral interest of the United States in lands described in a noncompetitive oil and gas lease offer for acquired lands proves to be larger or smaller than the interest stated, the rentals payable by the lessee shall be increased or decreased proportionately. If the federal mineral interest is larger than the stated interest and the advance rental is deficient by more than 10 percent, the lease will not issue. However, if the deficiency is remedied by payment of the additional rental and no offers are filed in the interim, the offer earns priority from the date the deficiency is remedied.

Irwin Rubenstein, 3 IBLA 250 (Sept. 21, 1971)

OPERATING AGREEMENTS

An instrument in which an assignor agrees to "grant, sell, assign and convey the exclusive right and privilege of testing and developing" is an operating agreement rather than an assignment of record title and creates no contractual relationship between the United States and the assignee.

Harry L. Bigbee, 2 IBLA 23 (Mar. 1, 1971)

REINSTATEMENT

It is proper to deny reinstatement of an oil and gas lease where a suit against the Secretary seeking review of a decision terminating the lease is dismissed with prejudice.

Duncan Miller, 2 IBLA 254 (May 10, 1971)

RELINQUISHMENTS

Failure to file a relinquishment in triplicate, as required by regulation, is a remediable deficiency and need not be fatal to the relinquishment's effect.

Harry L. Bigbee, 2 IBLA 23 (Mar. 1, 1971)

Pursuant to 30 U.S.C. § 188(c) (1970), the Secretary of the Interior, in determining whether to reinstate a lease which has been terminated by operation of law, may consider the mailing of an oil and gas lease annual rental payment as "tendered" where cogent evidence compels the conclusion that the payment was properly addressed, with postage prepaid, and mailed 20 days before the due date, although said payment was never received by the appropriate land office.

C. E. Knowles and R. E. Darling, 3 IBLA 307 (Oct. 5, 1971)

RENTALS

Rental paid for the first year of the lease term is earned upon execution of the lease on behalf of the United States and may not be refunded or pro-rated if the lease is subsequently canceled during the first year because of the lessee's noncompliance with applicable regulations.

Dominic J. Repici et al., 2 IBLA 14 (Mar. 1, 1971)

An oil and gas lease offer filed under the simultaneous filing procedure in 43 CFR 3123.9 (1969) (now 43 CFR 3112 (1971)), accompanied with a personal check for the advance rental payment, is properly rejected and excluded from the drawing for noncompliance with subsection 3112.2-1(a)(2) of that regulation, and the offeror's act of typing the words "MONEY ORDER" on the check does not render the check a money order within the meaning of that regulation.

James W. McDade, 2 IBLA 373 (June 23, 1971)

A protest of a successful drawee's offer in a simultaneous drawing, for the reason that the advance rental payment required under 43 CFR 3112.2-1 (a) was submitted in the form of a corporate or other private commercial money order, is properly dismissed where it is determined that such a money order is an acceptable remittance within

OIL AND GAS LEASES--Continued

RENTALS--Continued

the meaning of the term "money order" as used in the regulation.

Georgette B. Lee et al., 3 IBLA 272 (Sept. 30, 1971)

The proviso added to section 31(b) of the Mineral Leasing Act by section 1 of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(b) (1970), to except an oil and gas lease from automatic termination in certain circumstances where timely annual rental payment is deficient, is curative in effect; therefore, where a rental payment was nominally deficient as prescribed by the Act and defined by Departmental regulations and the deficiency was paid prior to the Act, the lease is not terminated unless a new lease had been issued prior to May 12, 1970.

Rijan Oil Company, 4 IBLA 153 (Dec. 17, 1971) 78 I.D. 359

RIGHTS-OF-WAY LEASES

The Secretary of the Interior has authority under the Act of May 21, 1930, to dispose of deposits of oil and gas underlying the right-of-way granted to the Northern Pacific Railroad Company pursuant to the Act of July 2, 1864, 13 Stat. 367, even though the lands traversed by the right-of-way were later patented under the Act of May 20, 1862, 43 U.S.C. § 161 (1964).

The oil and gas deposits underlying the right-of-way granted to a railroad company pursuant to the Acts of July 1, 1862, or July 2, 1864, remain in the United States, even though the lands traversed by the right-of-way were later patented pursuant to the general homestead laws without any specific reservation of the minerals.

George W. Zarak et al., Cardinal Petroleum Company, 4 IBLA 82 (Nov. 10, 1971)

TERMINATION

An oil and gas lease expires at the end of its statutorily extended term where there has not been compliance with any of the provisions of the Mineral Leasing Act under which a further extension of the lease may be granted.

Margaret H. Paumier, 2 IBLA 151 (Apr. 9, 1971)

Pursuant to 30 U.S.C. § 188(b) (1970), where an oil or gas lessee fails to make his annual rental payment at the appropriate land office on or before the anniversary date, the lease will be terminated by operation of law.

C. E. Knowles and R. E. Darling, 3 IBLA 307 (Oct. 5, 1971)

The proviso added to section 31(b) of the Mineral Leasing Act by section 1 of the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(b) (1970), to except an oil and gas lease from automatic termination in certain circumstances where timely annual rental payment is deficient, is curative in effect; therefore, where a rental payment was nominally deficient as

OIL AND GAS LEASES--Continued

TERMINATION--Continued

prescribed by the Act and defined by Departmental regulations and the deficiency was paid prior to the Act, the lease is not terminated unless a new lease had been issued prior to May 12, 1970.

Rijan Oil Company, 4 IBLA 153 (Dec. 17, 1971) 78 I.D. 359

OIL SHALE

LEASES

The Secretary has authority under section 19 of the Permanent Appropriations Repeal Act of June 26, 1934, as amended, to accept payment of revenues derived from oil shale leases covering lands within unpatented mining claims in accordance with a written agreement among the interested parties to place the money in a trust-fund account pending ultimate judicial determination of the respective rights of the parties, and, where provided for in the agreement and consented to by the lessee, to hold the revenues (1) for payment to the mining claimants upon issuance to them of patents if it should be determined that the mining claimants are entitled to the exclusive right of possession and enjoyment of the oil shale deposits and lands containing them, or (2) for transfer to the appropriate earned accounts if the mining claims are ruled invalid.

Where revenues derived from oil shale leases covering lands within unpatented mining claims are accepted as payment in accordance with an escrow agreement to that effect among the interested parties, and it is ultimately determined that the mining claimants are entitled to the issuance of patents based upon their exclusive right of possession and enjoyment of the oil shale deposits and lands containing them, the Secretary would be required by section 204(a) of the Act of July 14, 1960, to pay the lease revenues to the mining claimants upon issuance to them of patents, where the agreement so provides and it is consented to by the lessee.

Competitive Leasing of Oil Shale Lands Covered by Unpatented Mining Claims, M-36839 (Oct. 28, 1971)

Under section 21 of the Mineral Leasing Act of 1920, as amended, a person, association, or corporation may take and hold directly only one oil shale lease, which shall not exceed 5,120 acres. If that lease should expire or terminate for any reason, or be transferred, the lessee would not, on account of the issuance of the prior lease, be barred from acquiring another oil shale lease.

Sections 21 and 27(e)(1) of the Mineral Leasing Act of 1920, as amended, must be read together, and, when so construed, they permit a person, association, or corporation to take, hold, own, or control indirect interests in oil shale leases as a member of associations or as a stockholder in corporations, each holding an oil shale lease, if those interests, together with acreage directly held, owned, or

OIL SHALE--Continued

LEASES--Continued

controlled under an oil shale lease, do not exceed in the aggregate 5,120 acres.

Under the excepting clause of section 27(e)(1) of the Mineral Leasing Act of 1920, as amended, where a person is the beneficial owner of 10 percent or less of the stock or other instruments of ownership or control of an association or corporation holding an oil shale lease, that indirect interest would not be chargeable against his aggregate allowable oil shale lease acreage of 5,120 acres.

Limitations on Oil Shale Lease Holdings, M-36843 (Nov. 12, 1971)

MINING CLAIMS

The Secretary has authority under section 19 of the Permanent Appropriations Repeal Act of June 26, 1934, as amended, to accept payment of revenues derived from oil shale leases covering lands within unpatented mining claims in accordance with a written agreement among the interested parties to place the money in a trust-fund account pending ultimate judicial determination of the respective right of the parties, and, where provided for in the agreement and consented to by the lessee, to hold the revenues (1) for payment to the mining claimants upon issuance to them of patents if it should be determined that the mining claimants are entitled to the exclusive right of possession and enjoyment of the oil shale deposits and lands containing them, or (2) for transfer to the appropriate earned accounts if the mining claims are ruled invalid.

Where revenues derived from oil shale leases covering lands within unpatented mining claims are accepted as payment in accordance with an escrow agreement to that effect among the interested parties, and it is ultimately determined that the mining claimants are entitled to the issuance of patents based upon their exclusive right of possession and enjoyment of the oil shale deposits and lands containing them, the Secretary would be required by section 204(a) of the Act of July 14, 1960, to pay the lease revenues to the mining claimants upon issuance to them of patents, where the agreement so provides and it is consented to by the lessee.

Competitive Leasing of Oil Shale Lands Covered by Unpatented Mining Claims, M-36839 (Oct. 28, 1971)

OUTER CONTINENTAL SHELF LANDS ACT
(See also Oil and Gas Leases)

GENERALLY

Under his conservation authority the Secretary (or his delegate) may suspend operations on an OCS oil and gas lease while legislation is pending where such operations might lead to results inconsistent with the purpose of the legislation.

Under his conservation authority the Secretary (or his delegate) may suspend operations on an OCS oil and gas lease to permit the preparation of an environmental impact statement on

OUTER CONTINENTAL SHELF LANDS ACT--Continued

GENERALLY--Continued

exploratory drilling which will assist him in the determination of any special stipulations to be imposed on drilling permits.

When the regional oil and gas supervisor of the Geological Survey directs the suspension of operations on an OCS lease in the interest of conservation, the lease will be extended for a period equal to the period of suspension.

Suspension of Operations on Oil and Gas Leases, M-36831 (July 21, 1971) 78 I.D. 256

OIL AND GAS LEASES

Where no written notice from the Secretary of the Interior to cease all drilling and production operations on an Outer Continental Shelf Lands Act oil and gas lease was served on the lessee pursuant to 30 CFR 250.12, no extension to the lease term will be granted.

Humble Oil and Refining Company, Union Oil Company of California, Gulf Oil Corporation, Mobil Oil Corporation, Texaco, Inc., 3 IBLA 266 (Sept. 30, 1971)

SULPHUR LEASES

Where the notice of competitive bidding for sulphur leases reserves to the Government the right to reject any and all bids, the high bid may be rejected if the Secretary (or his delegate) determines it to be in the public interest to do so.

Humble Oil & Refining Company, 4 IBLA 72 (Nov. 8, 1971)

PATENTS OF PUBLIC LANDS

GENERALLY

A reservation of all minerals to the United States in a patent of public lands to the State of Arizona pursuant to 43 U.S.C. § 315(g) (1970) reserves valuable deposits of sand and gravel found thereon. No exception to this rule applies where those materials comprise all or substantially all of the land in question because the statute makes provision for the owner of the surface estate to receive payment for damages caused to the land and improvements thereon by mining operations.

United States v. Isbell Construction Company, 4 IBLA 205 (Dec. 30, 1971) 78 I.D. 385

AMENDMENTS

An application under Revised Statute sec. 2372 (43 U.S.C. § 697 (1964)) for amendment of a patent to land which asks for substitution of national forest land for land covered by the patent is properly rejected where the forest land has been reserved from entry.

A request for a patent amendment based upon an alleged error in the issued patent will be denied where the patentee and others of the petitioners' predecessors had not raised

PATENTS OF PUBLIC LANDS--Continued

AMENDMENTS--Continued

such objection and the petitioners cannot show that the lands described in the patent were not those intended to be entered by the original entryman.

Frank H. and Claire E. Stefflre, 3 IBLA 255, (Sept. 23, 1971)

EFFECT

For the purposes of the Federal-Aid Highway Act of 1958, 23 U.S.C. sec. 120 (Supp. V. 1969) those lands selected by the State of Alaska pursuant to the Alaska Statehood Act of 1958 (72 Stat. 339) remain public lands until such time as a final patent has been issued to the State.

Distribution of Funds for Federal Aid-Highways Based on Area of Lands in Federal Ownership in Alaska, M-36834 (Aug. 27, 1971)

The effect of the issuance of a patent is to transfer the legal title from the United States and to remove from the jurisdiction of this Department the consideration of all disputed questions of fact, including the determination of a question of rights to land.

Clarence March, 3 IBLA 261 (Sept. 23, 1971)

RESERVATIONS

A reservation of all minerals to the United States in a patent of public lands to the State of Arizona pursuant to 43 U.S.C. § 315(g) (1970) reserves valuable deposits of sand and gravel found thereon. No exception to this rule applies where those materials comprise all or substantially all of the land in question because the statute makes provision for the owner of the surface estate to receive payment for damages caused to the land and improvements thereon by mining operations.

United States v. Isbell Construction Company, 4 IBLA 205 (Dec. 30, 1971) 78 I.D. 385

POWER

TRANSMISSION LINES

An applicant for a transmission line right-of-way under the Act of March 4, 1911, is properly required to accept the stipulation imposed by the Department's regulations permitting the Department to utilize surplus capacity in the line or to increase the line for the transmission of power by the Department.

Utah Power & Light Company, 4 IBLA 62 (Nov. 5, 1971)

PRIVATE EXCHANGES

GENERALLY

Even though a land office determined that a private exchange under the Point Reyes National Seashore Act was in the public interest and the

PRIVATE EXCHANGES--Continued

GENERALLY--Continued

applicants submitted a deed to the offered land in favor of the United States, if a change in circumstances warrants, the exchange application can be rejected as not in the public interest by the Director, Bureau of Land Management. Prior to issuance of a patent on the selected land an exchange application is nothing more than a proposal under which no contract right arose and no equitable title vested.

Jack H. Stockstill et ux. and Vernon C. Mager et ux., 1 IBLA 278 (Feb. 22, 1971)

PROTESTS

Where the notice of publication of a private exchange states that the purpose of the notice is to give persons objecting to the exchange an opportunity to file their objections within 30 days after first publication of the notice, a protest filed after the end of the 30-day period can be considered.

Jack H. Stockstill et ux. and Vernon C. Mager et ux., 1 IBLA 278 (Feb. 22, 1971)

PUBLIC LANDS

(See also Boundaries, Surveys of Public Lands)

GENERALLY

Until school sections which either "shall be granted" or "are hereby granted" to states from lands on Indian reservations have been surveyed, title does not pass from the United States to the state. Such school sections, while unsurveyed, remain subject to the Indians' historic right of occupancy until that occupancy is extinguished by the United States. If that right is never extinguished, it must still exist. So the United States continues to hold title to such sections in trust for the Indians, and the Indians continue to enjoy their aboriginal right of occupancy in those sections under that trust.

Ownership of Unsurveyed School Lands Within the Flathead Indian Reservation, M-36827 (July 2, 1971)

Lands conveyed to the United States under the Act of June 4, 1897, 30 Stat. 11, 36, as a basis for a forest lieu selection which is consummated, are public lands of the United States.

Roger L. Morehart, 4 IBLA 1 (Oct. 26, 1971) 78 I.D. 307

DISPOSALS OF

Generally

Under the Act of August 8, 1968, 82 Stat. 663, which allows resale to "former owners," both Indian and non-Indian, of lands located on the Pine Ridge Indian Reservation that were taken by the United States in 1942 for use as an aerial gunnery range but have now been declared excess to the needs of the Department of the Air Force, it was contemplated that only natural persons would qualify under the act's definition of "former owners." A county of South Dakota

PUBLIC LANDS--Continued

DISPOSALS OF--Continued

Generally--Continued

is not a "former owner" within the meaning of that act. In addition, South Dakota's own statutes contain no authorization for boards of county commissioners to purchase land, except to condemn private property for public purposes.

Application of Shannon County, South Dakota, To Purchase Lands Within The Pine Ridge Aerial Gunnery Range, Pursuant to the Act of August 8, 1968, 82 Stat. 663, M-36817 (Jan. 12, 1971)

SPECIAL USE PERMITS

An application for the renewal of a special land-use permit is properly rejected where it is determined that it is not in the public interest to continue private occupancy of land which possesses recreational and scenic values, as further private occupancy would be inconsistent with the recently declared policy of the Congress with respect to this land and with the Bureau of Land Management's objectives and programs for the public use of the land.

Allen M. and Margery D. Boyden, 2 IBLA 128 (Apr. 7, 1971)

When during the pendency of an appeal from the rejection of a special land-use permit application, a regulation is promulgated which prohibits the issuance of the desired permit, it is proper to deny the application.

Desert Outdoor Advertising, Inc., 2 IBLA 344 (June 14, 1971)

A special land use permit will not be granted where other provisions of any existing law authorize the desired use; therefore, it is proper to reject an application for a special land use permit to accommodate an access road to a mining claim where the road is authorized by existing law.

Alfred E. Koenig, 4 IBLA 18 (Oct. 26, 1971)
78 I.D. 305

PUBLIC SALES

GENERALLY

The consummation of a public sale at which a contiguous landowner offered three times the appraised value of the land, which offer was lower than the high bid at the sale, will depend upon whether the contiguous land owner's bid is equal to the fair market value of the land on the date of sale.

Harold Wright, B. H. Milner, 1 IBLA 285 (Feb. 22, 1971)

It is proper to cancel a scheduled public sale and to reject the petition-application for classification where it is determined that inclusion of the land within a national forest is in the public interest.

An individual who files a petition-application to buy an isolated tract of land acquires no vested interest in the land by such filing, and the Secretary of the Interior may

PUBLIC SALES--Continued

GENERALLY--Continued

exercise his discretion as to whether to sell the land at any time prior to issuance of a patent.

J. D. Carter, 3 IBLA 44 (July 23, 1971)

Land which is mineral in character is not subject to public sale.

Land which is included in mining claims is not available for sale under 43 U.S.C. §1171 (1964) prior to a determination of the invalidity of the claims in appropriate administrative proceedings, and such proceedings will not be instituted where any advantage to the public interest that would be derived from effecting the public sale is too slight to warrant the expense and time required to contest the claims.

An applicant for a public sale, having no claim or interest in the land which he has applied for and no statutory right to obtain an interest which would enable him to contest the right claimed by another in the same land, has no basis upon which to demand that the Bureau of Land Management contest the claim of another in order to determine whether the land is available for sale under the Isolated Tract Law.

Richard W. Van Dyke, Marjorie Van Dyke, 3 IBLA 222 (Sept. 8, 1971)

Where a public sale application is rejected on the basis that the land has been conveyed out of federal ownership, and it is found that the land is public land, the application will be remanded for further appropriate consideration.

Roger L. Morehart, 4 IBLA 1 (Oct. 26, 1971)
78 I.D. 307

Where review of an appeal as to the award of the land offered at public sale reveals that the bidders were not notified of the requirement to compensate persons who had erected improvements on the land, the sale will be vacated.

Mrs. Hazel Ingersoll Hall, 4 IBLA 177 (Dec. 23, 1971)

APPLICATIONS

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P. L. 87-469, 76 Stat. 89, is properly rejected when the land has not been offered for public sale.

Jay O. and Jewell Wadsworth, 2 IBLA 229 (Apr. 30, 1971)

An individual who files a petition-application to buy an isolated tract of land acquires no vested interest in the land by such filing, and the Secretary of the Interior may exercise his discretion as to whether to sell the land at any time prior to issuance of a patent.

J. D. Carter, 3 IBLA 44 (July 23, 1971)

PUBLIC SALES--Continued

APPLICATIONS--Continued

Where a public sale application is rejected on the basis that the land has been conveyed out of federal ownership, and it is found that the land is public land, the application will be remanded for further appropriate consideration.

Roger L. Morehart, 4 IBLA 1 (Oct. 26, 1971) 78 I.D. 307

APPRAISALS

A public sale will be canceled under 43 CFR 2711.6 where it is not clearly established that the high bid (or appraisal) reflects the fair market value of the land on the date of the sale, or where, at any time up to the issuance of the patent, it appears that the fair market value of the land and the high bid may be grossly disparate.

Mrs. Hazel Ingersoll Hall, 4 IBLA 177 (Dec. 23, 1971)

AWARD OF LANDS

A public sale will be canceled under 43 CFR 2711.6 where it is not clearly established that the high bid (or appraisal) reflects the fair market value of the land on the date of the sale, or where, at any time up to the issuance of the patent, it appears that the fair market value of the land and the high bid may be grossly disparate.

Mrs. Hazel Ingersoll Hall, 4 IBLA 177 (Dec. 23, 1971)

CANCELLATION

It is proper to cancel a scheduled public sale and to reject the petition-application for classification where it is determined that inclusion of the land within a national forest is in the public interest.

J. D. Carter, 3 IBLA 44 (July 23, 1971)

Where review of an appeal as to the award of the land offered at public sale reveals that the bidders were not notified of the requirement to compensate persons who had erected improvements on the land, the sale will be vacated.

A public sale will be canceled under 43 CFR 2711.6 where it is not clearly established that the high bid (or appraisal) reflects the fair market value of the land on the date of the sale, or where, at any time up to the issuance of the patent, it appears that the fair market value of the land and the high bid may be grossly disparate.

Mrs. Hazel Ingersoll Hall, 4 IBLA 177 (Dec. 23, 1971)

PREFERENCE RIGHTS

The consummation of a public sale at which a contiguous landowner offered three times the appraised value of the land, which offer was lower than the high bid at the sale, will depend upon whether the contiguous landowner's bid is equal

PUBLIC SALES--Continued

PREFERENCE RIGHTS--Continued

to the fair market value of the land on the date of sale.

Harold Wright, B. H. Milner, 1 IBLA 285 (Feb. 22, 1971)

SALES UNDER SPECIAL STATUTES

An application to purchase public land under the Omitted Lands Act of May 31, 1962, P. L. 87-469, 76 Stat. 89, is properly rejected when the land has not been offered for public sale.

Jay O. and Jewell Wadsworth, 2 IBLA 229 (Apr. 30, 1971)

RAILROAD GRANT LANDS

The oil and gas deposits underlying the right-of-way granted to a railroad company pursuant to the Acts of July 1, 1862, or July 2, 1864, remain in the United States, even though the lands traversed by the right-of-way were later patented pursuant to the general homestead laws without any specific reservation of the minerals.

George W. Zarak et al., Cardinal Petroleum Company, 4 IBLA 82 (Nov. 10, 1971)

RECLAMATION HOMESTEADS

GENERALLY

The credit for military service which an heir of the original reclamation homestead entryman may use may be applied to both the obligation under the homestead law to cultivate and under the reclamation law to reclaim 1/4 of the irrigable area within three full irrigation seasons.

David H. Evans v. Ralph C. Little, 1 IBLA 269 (Feb. 19, 1971) 78 I.D. 47

RECLAMATION LANDS

GENERALLY

Land in a second form reclamation withdrawal remains open to mineral location.

M. G. Johnson, 2 IBLA 106 (Apr. 5, 1971) 78 I.D. 107

For the purpose of determining whether entered but unpatented land can be disposed of pursuant to section 6 of the Smith Act of August 11, 1916, the "irrigation works" referred to in that section are not those necessary on an individual entry to carry out irrigation but refer to facilities that serve the irrigation district in general, and "water of the district available for such land" means only that the entryman has a legally enforceable claim to available water even though access to it is barred by a Departmental regulation.

C. Arden Gingery, Michiko Shiota (Gingery), 2 IBLA 351 (June 23, 1971) 78 I.D. 218

RECLAMATION LANDS--Continued

ACQUISITION AND DISPOSAL

Where an irrigation district acting pursuant to the Smith Act of August 11, 1916, has enforced its lien against public land in an unpatented desert land entry and has sold the land at a tax sale, the rights of the entryman and his successors are terminated and the rights of the purchaser are determined by the Smith Act.

C. Arden Gingery, Michiko Shiota (Gingery), 2 IBLA 351 (June 23, 1971) 78 I.D. 218

INCLUSION AND EXCLUSION OF WITHIN IRRIGATION DISTRICT

Land within a desert land entry included in an irrigation district does not become subject to a later reclamation withdrawal so long as the entry subsists.

C. Arden Gingery, Michiko Shiota (Gingery), 2 IBLA 351 (June 23, 1971) 78 I.D. 218

RECREATION AND PUBLIC PURPOSES ACT

Where land riparian to the Snake River has been classified for disposal to a county for recreational purposes under the Recreation and Public Purposes Act, the protest of an adjoining land owner asserting a belief he may own the land, and objecting that he will be deprived of use of the land and that there will be a possible adverse future effect on his privately owned lands when the county acquires the tract, is properly dismissed where there is no showing he has any legal claim to the land which must be recognized by the federal government.

Joseph Burden, 4 IBLA 197 (Dec. 30, 1971)

REGULATIONS.
(See also Administrative Procedure Act)

GENERALLY

States which have assumed the requisite jurisdiction over Indian country under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. section 1162 and 28 U.S.C. section 1360) or under the Civil Rights Act of 1968 (Act of April 11, 1968, 82 Stat. 77-81, 25 U.S.C. sections 1321-1322 (Supp. V, 1965-1969)) are required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations if the enforcement does not involve the regulation of property held in trust by the United States for the benefit of the Indians. States which have not assumed the aforementioned jurisdiction over Indian country are not authorized or required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations unless the Secretary of the Interior were to enact regulations authorizing such enforcement under the authority granted him by the Act of February 15, 1929, 45 Stat. 1185, as amended, 25 U.S.C. section 231.

Applicability of the Wholesome Meat Act of 1967 on Indian Reservations, M-36811 (Feb. 1, 1971) 78 I.D. 18

REGULATIONS--Continued

GENERALLY--Continued

An oil and gas lease offer filed under the simultaneous filing procedure in 43 CFR 3123.9 (1969) (now 43 CFR 3112 (1971)), accompanied with a personal check for the advance rental payment, is properly rejected and excluded from the drawing for noncompliance with subsection 3112.2-1(a)(2) of that regulation, and the offeror's act of typing the words "MONEY ORDER" on the check does not render the check a money order within the meaning of that regulation.

James W. McDade, 2 IBLA 373 (June 23, 1971)

A protest of a successful drawee's offer in a simultaneous drawing, for the reason that the advance rental payment required under 43 CFR 3112.2-1 (a) was submitted in the form of a corporate or other private commercial money order, is properly dismissed where it is determined that such a money order is an acceptable remittance within the meaning of the term "money order" as used in the regulation.

Georgette B. Lee et al., 3 IBLA 272 (Sept. 30, 1971)

Where an applicant for a prospecting permit does not personally submit a statement of citizenship and acreage holdings in his own name, his power of attorney must specifically authorize and empower his attorney-in-fact to make such statement or to execute all statements which may be required under the regulations.

A departmental regulation promulgated pursuant to statutory authority has the force and effect of law. An application which does not comply with the clear and unequivocal requirements of the regulations must be rejected.

Frank Allison, 3 IBLA 317 (Oct. 8, 1971)

APPLICABILITY

Where regulations have been recodified and redesignated in accordance with prescribed procedures, compliance with the mandatory requirements of these regulations is not excused, nor are the regulations rendered ambiguous, merely because various forms of the Department in current use refers to such regulations by their supplanted code designations.

Pan Ocean Oil Corporation, 2 IBLA 156 (Apr. 12, 1971)

Where a regulation is amended during the pendency of an appeal from the rejection of an application, and the amendment precludes the granting of that kind of an application whose allowance would otherwise be discretionary, the amended regulation governs.

Desert Outdoor Advertising, Inc., 2 IBLA 344 (June 14, 1971)

Where an applicant for a prospecting permit does not personally submit a statement of citizenship and acreage holdings in his own name, his power of attorney must specifically authorize and empower his attorney-in-fact to make such statement or to execute all statements which may be required under the regulations.

RULES OF PRACTICE--Continued

APPEALS--Continued

Burden of Proof--Continued

A claim for a time extension because of alleged deficient design will be denied when appellant fails to prove by any substantial evidence the allegation of design deficiency.

Appellant's claim that the project was substantially complete by a certain date is denied where no proof has been submitted that the project road was capable of adequately serving its intended use as of that date.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

A licensee of the federal range who appeals from a district manager's determination of the area of use of his grazing privileges has the burden of proof to show by substantial evidence that his rights have been impaired by the Bureau action and that the decision was improper.

Joyce Livestock Company, 2 IBLA 322 (June 2, 1971)

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the claimant then has the burden of proof to show with a preponderance of the evidence that a discovery has been made.

United States v. Howard S. McKenzie, 4 IBLA 97 (Nov. 19, 1971)

A claim for a changed condition will be denied when the contractor fails to present adequate evidence as to what the field conditions were, and fails to prove that the field conditions differed materially from conditions shown in the contract documents.

A changed condition claim will be denied where the contractor fails to show significant error in the data contained in the contract documents.

Appeal of S. S. Mullen Construction, Inc., IBCA-860-7-70 (Dec. 28, 1971) 78 I.D. 372

Dismissal

An appeal to the Secretary of the Interior will be dismissed where the appellants request such a dismissal, and no reason for maintaining the action is apparent.

Charles R. Jolley, Clifford C. Burglin, 1 IBLA 475 (Jan. 15, 1971)

An appeal to the Director, Bureau of Land Management, will be dismissed where the appellant did not timely file the notice of appeal in the proper office.

Carlson Oil Company, Inc., 1 IBLA 238 (Jan. 15, 1971) 78 I. D. 13

An appeal to the Director, Bureau of Land Management, will be dismissed where the appellant requests such a dismissal, and no reason for maintaining the action is apparent.

Texaco, Inc., 1 IBLA 477 (Jan. 18, 1971)

An appeal to the Director, Bureau of Land Management, from a decision requiring acceptance of special stipulations as a condition precedent to renewing a potassium lease will be dismissed when the State Director, Bureau of Land Management, advises that the controversy on appeal has been reconciled through cooperative effort of the appellants, the Geological Survey and the Bureau of Land Management, and that new stipulations agreeable to all parties involved will be included in the renewal lease.

U. S. Potash & Chemical Company, Duval Corporation, 1 IBLA 479 (Jan. 22, 1971)

An appeal to the Secretary of the Interior will be dismissed when the appeal is withdrawn.

Oregon Alder-Maple Company, 1 IBLA 241 (Jan. 26, 1971)

An appeal to the Secretary of the Interior will be dismissed when it is withdrawn by the appellant.

Quantex Corporation, 1 IBLA 482 (Jan. 27, 1971)

An appeal to the Secretary of the Interior will be dismissed when the appellant withdraws the appeal and the application that was the subject of the appeal.

El Paso Natural Gas Company, 1 IBLA 485 (Feb. 2, 1971)

An appeal to the Secretary of the Interior from rejection of a grazing lease application will be dismissed, the decision below vacated, and the case remanded when the conflicting application which caused the rejection is withdrawn.

Wallace B. York, Lyle Phelps, 1 IBLA 487 (Feb. 3, 1971)

An appeal to the Secretary of the Interior will be dismissed when it is withdrawn.

Quantex Corporation, Cameo Minerals Inc., 1 IBLA 489 (Feb. 4, 1971)

Where a Bureau of Land Management land office rejects an application for a preference right coal lease for the reason that commercial coal was not discovered under a prospecting permit, and subsequently the Director, Geological Survey, reports that coal in commercial quantity and quality was discovered during the life of the permit, the decision below will be vacated, the appeal dismissed, and the case remanded for issuance of the coal lease.

Kemmerer Coal Company, 1 IBLA 491 (Feb. 5, 1971)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Director, Bureau of Land Management, will be dismissed when it is withdrawn by the appellant.

Texas Gulf Sulphur Company, 1 IBLA 494
(Feb. 5, 1971)

An appeal to the Secretary of the Interior will be dismissed when the notice of appeal is withdrawn.

Don H. Sherwood, Trustee, 1 IBLA 508
(Feb. 18, 1971)

Consolidation Coal Company, 2 IBLA 404
(Mar. 18, 1971)

An appeal to the Director, Bureau of Land Management, from a decision declaring an oil and gas lease to be automatically terminated for failure to pay rental on time will be dismissed to permit consideration of a petition by the appellant to reinstate the lease under the provisions of remedial legislation, subject to the right of the appellant to reinstate his appeal in the event the petition is denied.

Mark J. Davis, 1 IBLA 293 (Feb. 25, 1971)

Where appellant's claim for excavation was presented over five years after the work was done and two years after completion of the contract, the Government's motion to dismiss for failure to give timely notice of the claim was denied on the present state of the record in the absence of a clear showing of prejudice to the Government.

Appeal of Ets-Hokin Corporation, IBCA-842-6-70
(Mar. 1, 1971) 78 I.D. 53

An appeal to the Board of Land Appeals will be dismissed when it is withdrawn.

An appeal to the Board of Land Appeals will be dismissed, the decision appealed from vacated, and the case remanded to the Bureau of Land Management when the instruction giving rise to the decision below has been revoked, and the cause for appeal has thus been removed.

El Paso Natural Gas Company, 2 IBLA 29
(Mar. 1, 1971)

An appeal to the Board of Land appeals will be dismissed when the appellant fails to file a statement of reasons in support of the appeal.

John R. Hutchins, 2 IBLA 401 (Mar. 1, 1971)

An appeal to the Board of Land Appeals will be dismissed and the case remanded to the Bureau of Land Management when the instruction giving rise to the decision below has been rescinded, and the cause for appeal has thus been removed.

Southern California Edison Company, 2 IBLA 409
(Mar. 22, 1971)

An appeal to the Board of Land Appeals will be dismissed and the case remanded to the Bureau of Land Management when the instruction giving rise to the decision below has been revoked, and the cause for appeal has thus been removed.

Montana Power Company, 2 IBLA 413
(Mar. 23, 1971)

When an appeal from a hearing examiner's decision in a grazing case has been withdrawn, the appeal will be dismissed by the Board of Land Appeals.

J. Sterling Bray et al., 2 IBLA 420
(Mar. 31, 1971)

While it is not mandatory that an appeal to the Director of the Bureau of Land Management be summarily dismissed on the ground that the appellants did not serve either the notice of appeal or statement of reasons for appeal on the adverse party and file proof of service, the appeal may be summarily dismissed if the Board of Land Appeals in the exercise of its discretion determines that the circumstances warrant dismissal.

United States v. Lee H. Rice and Goldie E. Rice, 2 IBLA 124 (Apr. 6, 1971)

Where a contract with a County requires the Government to build a replacement road and bridge in connection with land acquired for the construction of the Auburn Dam and Reservoir and the County complains (i) that in planning for and constructing the replacement road and bridge the Government had failed to adhere to standards proscribed in the contract and (ii) that it had failed to secure the County's approval for access from the replacement road to adjacent Government-owned land acquired for recreational purposes in violation of the contractual provision requiring approval of all accesses granted outside of the project takeline, the appeal is dismissed since the Board found (i) that the contract contained no contract provisions under which the wrongs alleged could be remedied and (ii) that the Disputes clause itself was not sufficient to confer jurisdiction. In reaching this conclusion the Board noted that dismissal of the appeal on jurisdictional grounds was proper, even though neither party had raised any question as to the Board's jurisdiction over the claims asserted.

Allegations by a County for which a replacement road was being built that the contracting officer had acted in an arbitrary manner and that its

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

future course of action was to some extent dependent upon the result of the Board's review of the County's complaints, warrants Board examination of the complaints in detail even though it concludes on jurisdictional grounds that it has no authority to finally pass upon the claims asserted.

Appeal of Placer County, California, IBCA-777-5-69 (Apr. 8, 1971) 78 I. D. 113

An appeal to the Board of Land Appeals will be dismissed where action of the appellant has rendered the appeal moot.

T. R. Young, Jr., 2 IBLA 424 (Apr. 8, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support thereof within the time required.

Henry Cordes, 2 IBLA 429 (May 4, 1971)

Andrew W. Miscovich, 2 IBLA 435 (May 11, 1971)

Emery Tower, 3 IBLA 403 (July 29, 1971)

Julian B. Falk, 3 IBLA 445 (Oct. 18, 1971)

Richard B. Trexler, 3 IBLA 447 (Oct. 20, 1971)

California Time Petroleum, Inc., 4 IBLA 407 (Oct. 26, 1971)

Benjamin T. Franklin, 4 IBLA 415 (Nov. 5, 1971)

James A. Krumhansl, 4 IBLA 417 (Nov. 5, 1971)

C. J. Perts, 4 IBLA 419 (Nov. 5, 1971)

John Oakason, 4 IBLA 426 (Nov. 22, 1971)

R. M. Barton, 4 IBLA 431 (Nov. 29, 1971)

Atlantic Richfield Company, 4 IBLA 441 (Dec. 10, 1971)

Erma G. Liebing, 4 IBLA 443 (Dec. 10, 1971)

An appeal to the Director, Bureau of Land Management, from a decision requiring acceptance of special restrictive stipulations as a condition precedent to issuance of a noncompetitive oil and gas lease will be dismissed when the appellant indicates his present willingness to accept the stipulations.

M. R. Paglee, 2 IBLA 431 (May 4, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal.

Erma G. Lawrence, 2 IBLA 433 (May 6, 1971)

Harold L. Anderson, 3 IBLA 429 (Sept. 24, 1971)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Board of Land Appeals will be dismissed when the appellants fail to file a statement of reasons in support thereof within the time required.

United States v. Benjamin L. Taylor and Martha L. Taylor, 2 IBLA 437 (May 11, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellants satisfy the requirements set forth in the decision appealed from, and the issue on appeal thus becomes moot.

Geocon, Inc., and Cameo Minerals, Inc., 2 IBLA 439 (May 14, 1971)

Geocon, Inc., and Cameo Minerals, Inc., 2 IBLA 441 (May 14, 1971)

A notice of appeal to the Board of Land Appeals will be dismissed where such notice is not transmitted within the 30-day period following service of the decision from which appeal is being taken.

George Raymond Murphy, 2 IBLA 443 (May 20, 1971)

Where the transmittal of an appeal to the Board of Land Appeals is accompanied by the recommendation of the State Director that the decision be vacated because it was premised on a non-prejudicial error made by the appellant in completing his application form, and where the Board determines that the error is indeed remediable, the decision may be vacated, the appeal dismissed, and the case remanded.

John H. Rutherford, 2 IBLA 446 (June 11, 1971)

An appeal to the Board of Land Appeals will be dismissed when the notice of appeal is withdrawn.

James A. Hunter, 2 IBLA 449 (June 22, 1971)

An appeal to the Director, Bureau of Land Management, will be dismissed where action of the appellant has rendered the appeal moot.

McClure Oil Company, 2 IBLA 451 (June 23, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support thereof within the time required.

Harry T. McClain and Irvin D. Bryson, 2 IBLA 453 (June 30, 1971)

John J. Teal, Jr., 2 IBLA 456 (June 30, 1971)

An interlocutory decision rendered prior to the promulgation of the current rules of practice was not subject to appeal, and a purported appeal therefrom is dismissed as premature.

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Although the current regulation, 43 CFR 4.28 (36 F. R. 7189), permits interlocutory appeals in certain limited circumstances, the Board of Land Appeals will not grant permission thereunder for the filing of such an appeal unless it appears that disposition of such appeal may materially advance the final decision.

United States v. Merle I. Zweifel et al., 3 IBLA 1 (July 2, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the oil and gas lease offer which was the subject of the appeal.

Chevron Oil Company, 3 IBLA 401 (July 13, 1971)

An interlocutory decision rendered prior to the promulgation of the current rules of practice, adopted April 15, 1971, is not subject to appeal, and a purported appeal therefrom is dismissed as premature.

Although the current regulation, 43 CFR 4.28 (36 F. R. 7189) permits interlocutory appeals in certain limited circumstances, the Board of Land Appeals will not grant permission thereunder for the filing of such an appeal unless it appears that disposition of such appeal may materially advance the final decision. The Board of Land Appeals will rule in such an interlocutory appeal only on the issues appropriate to materially advance the case, e.g., contestee's objection to the place of the hearing to be held.

United States v. Jack Gardener, 3 IBLA 48 (July 30, 1971)

Where a case has been remanded to the Department to consider whether a statement of reasons, mailed four days late, should be accepted in the light of the regulation reciting that the late filing of a statement of reasons "will subject the appeal to summary dismissal," discretionary authority will not be exercised favorably unless it has been shown that there were good and cogent reasons for the delay.

Even though failure to timely file a statement of reasons merely "will subject the appeal to summary dismissal," such failure will not be excused in the absence of a compelling showing, since it is the policy of the Department to require strict observance of the rules of practice to insure orderly procedure to all litigants before the Department.

United States v. Richard P. Haskins et al., 3 IBLA 77 (July 30, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support thereof within the time required.

Perley M. Lewis, 3 IBLA 405 (Aug. 6, 1971)

An appeal to the Board of Land Appeals will be dismissed when it is withdrawn by the appellant.

Phillip G. Sturlin, Clover Sturlin, 3 IBLA 407 (Aug. 10, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support thereof within the time required.

Benjamin T. Franklin, 3 IBLA 409 (Aug. 11, 1971)

John Oakason, 3 IBLA 411 (Aug. 11, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the airport lease application which was the subject of the appeal.

Black Canyon City Community Association, Inc., 3 IBLA 414 (Aug. 31, 1971)

An appeal to the Board of Land Appeals will be dismissed when the notice of appeal is withdrawn.

Duncan Miller, 3 IBLA 416 (Aug. 31, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant satisfies the requirements set forth in the decision appealed from, and the issue on appeal thus becomes moot.

Jean Oakason, 3 IBLA 418 (Aug. 31, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal.

Malcolm F. Justice, Jr., 3 IBLA 420 (Sept. 8, 1971)

Harold L. Anderson, 3 IBLA 429 (Sept. 24, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant requests refund of its bonus payment made in connection with the competitive oil and gas lease which was the subject of the appeal.

Ladd Petroleum Corporation, 3 IBLA 422 (Sept. 8, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellants withdraw the appeal.

Mary L. Brandt, James P. Witmer, Executor of the Estate of Natalie Z. Shell, deceased E. Louise Safarik, 3 IBLA 424 (Sept. 16, 1971)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

An appeal to the Board of Land Appeals will be dismissed when the appellant fails to file a statement of reasons in support thereof within the time required.

John Henshaw, 3 IBLA 426 (Sept. 16, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal and complies with the requirements imposed by the land office which were the subject of the appeal.

John Oakason, 3 IBLA 431 (Sept. 24, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the application that was the subject of the appeal.

James A. Krumhansl, 3 IBLA 433 (Sept. 28, 1971)

Jean Oakason, 3 IBLA 435 (Oct. 1, 1971)

Cameo Minerals, Inc., M. S. Papulak, 4 IBLA 401 (Oct. 21, 1971)

Kay Papulak, 4 IBLA 403 (Oct. 21, 1971)

B. H. Rosenblatt, M. S. Papulak, 4 IBLA 405 (Oct. 21, 1971)

R. J. McCall, 4 IBLA 409 (Oct. 29, 1971)

John Oakason, 4 IBLA 413 (Oct. 29, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellants withdraw the appeal.

H. L. Bigler, Ford L. Dillon, Ina Lorraine Dillon, R. L. Speck, 3 IBLA 437 (Oct. 6, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellants withdraw the appeal and comply with the requirements imposed by the land office which were the subject of the appeal.

Cameo Minerals, Inc. Geocon, Inc., 3 IBLA 439 (Oct. 8, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal and complies with the requirements imposed by the land office which were the subject of the appeal.

Quantex Corporation, 3 IBLA 441 (Oct. 8, 1971)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

A decision by district office, Bureau of Land Management, will be vacated at the request of the Director, Bureau of Land Management where it appears that the district office decision was issued prematurely.

Charles E. Cook Lumber Co., 3 IBLA 443 (Oct. 15, 1971)

An appeal to the Director of the Bureau of Land Management is properly dismissed where three months elapsed from the date on which the notice of appeal was filed and the appellant failed to file any statement of reasons in support of the appeal and did not request an extension of time within which to file such statement.

Edwin W. Wutzke, 4 IBLA 40 (Oct. 28, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal and complies with the requirements imposed by the land office which were the subject of the appeal.

James W. Nance, 4 IBLA 411 (Oct. 29, 1971)

An appeal from a decision of a state office, Bureau of Land Management, will be dismissed when the appellant fulfills the requirements of the decision appealed from, and the issue on appeal thus becomes moot.

Joseph H. Dooley, 4 IBLA 421 (Nov. 22, 1971)

Where an appellant asserts a claim to the oil and gas deposits within a parcel offered by the Bureau of Land Management for oil and gas lease by competitive bidding, and the Bureau's State Director acknowledges that there is doubt that the Government does own such oil and gas deposits, the decision calling upon the high bidder to complete the requirements for a competitive oil and gas lease will be vacated, the appeal therefrom dismissed, and the case remanded for determination of the ownership of the oil and gas deposits.

Willis P. Martens, 4 IBLA 423 (Nov. 22, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant complies with the requirements imposed by the Bureau of Land Management state office which were the subject of the appeal.

An appeal to the Board of Land Appeals will be dismissed where action of the appellant has rendered the appeal moot.

John Oakason, 4 IBLA 428 (Nov. 22, 1971)

RULES OF PRACTICE--Continued

APPEALS--Continued

Dismissal--Continued

Where the Director, Bureau of Land Management, states a district manager's decision was based upon incorrect interpretation of the terms in a timber sale contract, and requests the case be remanded for further action by the Bureau, the decision appealed from will be vacated and the case remanded.

Star Lumber Company, 4 IBLA 433 (Dec. 1, 1971)

An appeal to the Director, Bureau of Land Management, will be dismissed when the appellant fails to file a statement of reasons in support thereof within the time required.

Sarah Ann Christie, 4 IBLA 435 (Dec. 7, 1971)

Chugach Electric Association, Inc., 4 IBLA 438 (Dec. 7, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant withdraws the appeal and complies with the requirements imposed by the Bureau of Land Management which were the subject of the appeal.

G. W. Anderson, 4 IBLA 150 (Dec. 15, 1971)

Ida Lee Anderson, 4 IBLA 147 (Dec. 15, 1971)

An appeal to the Board of Land Appeals will be dismissed when the appellant abandons the appeal.

R. M. Barton, 4 IBLA 445 (Dec. 22, 1971)

An appeal from a decision rejecting an application for a hardrock prospecting permit on acquired lands administered by the Forest Service because that agency declined to consent to the issuance of the permit, will be dismissed and the case remanded to the Bureau of Land Management for further action when the Forest Service, in a supplemental report, consents to the issuance of the prospecting permit if special stipulations are accepted.

Duval Corporation, 4 IBLA 175 (Dec. 23, 1971)

An appeal to the Board of Land Appeals will be dismissed when appellant withdraws the application that was the subject of the appeal.

Nicholas K. Ihli, 4 IBLA 447 (Dec. 27, 1971)

Hearings

The granting of a request for oral argument on a motion for reconsideration is discretionary with the Board and when no reasons are advanced in support of the request for oral argument and it does not appear that the Board's consideration of the motion would be in any way facilitated by such argument, the request for oral argument will be denied.

Appeal of South Portland Engine Company, Inc., IBCA-807-10-69 (July 23, 1971)

RULES OF PRACTICE--Continued

APPEALS--Continued

Hearings--Continued

A timber sale contract will be considered as modified by the Bureau of Land Management and the purchaser thereunder where the record produced at a hearing provides a reasonable basis for finding that the parties agreed to a substituted change in the road rocking obligations of the purchaser; however, the purchaser will not be found to be in default under the modified terms of the contract if the record fails to substantiate the Bureau's charge that the purchaser breached its obligations.

Parker Industries, Inc., 4 IBLA 117 (Nov. 30, 1971)

A hearing will not be granted in connection with a desert land entry application where the applicant fails to allege facts which, if proved, would entitle him to favorable consideration of his application.

Leroy Martin, 4 IBLA 160 (Dec. 17, 1971)

Mining claims located on lands purchased by the United States under the Act of April 8, 1935, 49 Stat. 115, and added to the Kaniksu National Forest by the Act of August 10, 1939, 53 Stat. 1347, may not be declared null and void ab initio, but the mining claimants must be afforded notice and an opportunity for hearing before the claims are subject to cancellation.

Ernest Smith, Ruth Smith, 4 IBLA 192 (Dec. 27, 1971) 78 I.D. 368

Service on Adverse Party

While it is not mandatory that an appeal to the Director of the Bureau of Land Management be summarily dismissed on the ground that the appellants did not serve either the notice of appeal or statement of reasons for appeal on the adverse party and file proof of service, the appeal may be summarily dismissed if the Board of Land Appeals in the exercise of its discretion determines that the circumstances warrant dismissal.

United States v. Lee H. Rice and Goldie E. Rice, 2 IBLA 124 (Apr. 6, 1971)

Standing to Appeal

An interlocutory decision rendered prior to the promulgation of the current rules of practice was not subject to appeal, and a purported appeal therefrom is dismissed as premature.

Although the current regulation, 43 CFR 4.28 (36 F. R. 7189), permits interlocutory appeals in certain limited circumstances, the Board of Land Appeals will not grant permission thereunder for the filing of such an appeal unless it appears that disposition of such appeal may materially advance the final decision.

United States v. Merle I. Zweifel et al., 3 IBLA 1 (July 2, 1971)

RULES OF PRACTICE --Continued

APPEALS--Continued

Standing to Appeal--Continued

An interlocutory decision rendered prior to the promulgation of the current rules of practice, adopted April 15, 1971, is not subject to appeal, and a purported appeal therefrom is dismissed as premature.

Although the current regulation, 43 CFR 4.28 (36 F. R. 7189) permits interlocutory appeals in certain limited circumstances, the Board of Land Appeals will not grant permission thereunder for the filing of such an appeal unless it appears that disposition of such appeal may materially advance the final decision. The Board of Land Appeals will rule in such an interlocutory appeal only on the issues appropriate to materially advance the case, e.g., contestee's objection to the place of the hearing to be held.

United States v. Jack Gardener, 3 IBLA 48 (July 30, 1971)

One who is notified by decision that his oil and gas lease offers are subject to rejection when and if the subject lands are leased to another whose conflicting offers have been conditionally approved, has standing to appeal as a party adversely affected, and such a party need not wait until the leases are actually issued before the right to appeal arises.

James W. McDade, 3 IBLA 226 (Sept. 10, 1971)

Statement of Reasons

An appeal to the Secretary of the Interior will be dismissed when the appellant fails to file a statement of reasons in support thereof within the time required.

Milan S. Papulak, 1 IBLA 496 (Feb. 10, 1971)

Paul Schroth, 1 IBLA 498 (Feb. 10, 1971)

United States of America v. James S. Poston, 1 IBLA 503 (Feb. 10, 1971)

Rancher's Equipment & Supply Co., Inc., 1 IBLA 505 (Feb. 16, 1971)

Lester Brown, 2 IBLA 416 (Mar. 30, 1971)

Richard C. Carroll, 2 IBLA 418 (Mar. 30, 1971)

United States v. Les and Lucy Neilson, 2 IBLA 422 (Mar. 31, 1971)

Richard B. Collins, 2 IBLA 426 (Apr. 19, 1971)

An appeal to the Secretary of the Interior will be dismissed when the appellants fail to file a statement of reasons in support thereof within the time required.

United States of America v. Ellis E. Craig, James E. Craig, Russell McCollum, Jonathan Winters, 1 IBLA 500 (Feb. 10, 1971).

RULES OF PRACTICE--Continued

APPEALS--Continued

Statement of Reasons--Continued

An appeal to the Board of Land appeals will be dismissed when the appellant fails to file a statement of reasons in support of the appeal.

John R. Hutchins, 2 IBLA 401 (Mar. 1, 1971)

While it is not mandatory that an appeal to the Director of the Bureau of Land Management be summarily dismissed on the ground that the appellants did not serve either the notice of appeal or statement of reasons for appeal on the adverse party and file proof of service, the appeal may be summarily dismissed if the Board of Land Appeals in the exercise of its discretion determines that the circumstances warrant dismissal.

United States v. Lee H. Rice and Goldie E. Rice, 2 IBLA 124 (Apr. 6, 1971)

The rejection of an acquired lands oil and gas lease offer will be affirmed where the deed to the United States reserves minerals to the grantor county and the appellant makes only general, unsupported assertions that the county lacked authority to reserve the minerals.

J. W. McTiernan, 3 IBLA 19 (July 15, 1971)

Where a case has been remanded to the Department to consider whether a statement of reasons, mailed four days late, should be accepted in the light of the regulation reciting that the late filing of a statement of reasons "will subject the appeal to summary dismissal," discretionary authority will not be exercised favorably unless it has been shown that there were good and cogent reasons for the delay.

United States v. Richard P. Haskins et al., 3 IBLA 77 (July 30, 1971)

An appeal to the Director of the Bureau of Land Management is properly dismissed where three months elapsed from the date on which the notice of appeal was filed and the appellant failed to file any statement of reasons in support of the appeal and did not request an extension of time within which to file such statement.

Edwin W. Wutzke, 4 IBLA 40 (Oct. 28, 1971)

Timely Filing

Where appellant's claim for excavation was presented over five years after the work was done and two years after completion of the contract, the Government's motion to dismiss for failure to give timely notice of the claim was denied on the present state of the record in the absence of a clear showing of prejudice to the Government.

Appeal of Ets-Hokin Corporation, IBCA-842-6-70 (Mar. 1, 1971) 78 I. D. 53

An appeal to the Director, Bureau of Land Management, from a decision of a hearing examiner which is received after the period set

RULES OF PRACTICE--Continued

APPEALS--Continued

Timely Filing--Continued

by the rules of procedure for grazing cases will not be dismissed solely for that reason, but the circumstances surrounding the appeal will be examined to determine whether in the exercise of discretion the late appeal should be accepted.

An appeal to the Director, Bureau of Land Management, from a decision of the hearing examiner which is mailed within the appeal period and received one day late will be accepted where there is no prejudice to the other parties and where the filing party derived no advantage from his tardiness.

Delbert and George Allan, Eldon L. Smith, et al., 2 IBLA 35 (Mar. 4, 1971) 78 I.D. 55

EVIDENCE

The contractor is awarded 11 days of time extension for unusually severe weather on a road building project based on evidentiary admissions in contracting officer's statements which established an unrebutted presumption of liability.

A claim for a time extension because of alleged deficient design will be denied when appellant fails to prove by any substantial evidence the allegation of design deficiency.

Appeal of Roy L. Matchett, IBCA-826-2-70 (Feb. 26, 1971)

The technical exclusionary rules of evidence applied in court proceedings need not be followed in administrative hearings; therefore, the fact that hearsay evidence, consisting of an assay report, was received by the Hearing Examiner in a Government contest, together with other evidence, is no reason for changing a decision which is sustainable even without such evidence.

Testimony by a Government mineral examiner that he examined a mining claim and the workings thereon but found no evidence of a valuable mineral deposit is sufficient to establish a prima facie case by the Government as to its right to use and manage the surface of the claim.

United States v. A. P. Jones, 2 IBLA 140 (Apr. 8, 1971)

Evidence tendered on appeal in a mining contest case may not be considered except for the limited purpose of deciding whether a further hearing is warranted, since the record made at the hearing must be the sole basis for decision.

In a government mining contest, where the contestant has made a prima facie showing of lack of discovery, the burden of producing preponderating evidence of the existence of a valuable

RULES OF PRACTICE--Continued

EVIDENCE--Continued

mineral deposit sufficient to support a discovery is upon the claimant, and he cannot secure a determination that the claim is valid merely by attempting to discredit and impeach the government's witnesses.

New evidence tendered on appeal is not sufficient to justify further evidentiary proceedings, although it might discredit testimony by government mineral examiners that two of their samples of a placer mining claim were taken to bedrock, where there is no tender of proof showing that the alleged greater mineral values at bedrock actually exist and the record does not show evidence of sufficient gold to warrant a prudent man to anticipate development of a valuable mine.

United States v. Wayne Winters d/b/a/ Piedras Del Sol Mining Company, 2 IBLA 329 (June 2, 1971) 78 I.D. 193

Where the contestee declines to present any evidence to rebut the contestant's prima facie case, either at the hearing or during a subsequent 30-day period while the record is held open for the receipt of such evidence, and where the contestee likewise fails to avail herself of opportunities provided to present motions for a rehearing and to have the claims reexamined by the government, motions presented on appeal for a reexamination of the claims and for a new hearing will be denied.

The sole basis for decision in a contest case is the record made at the hearing, although evidence submitted on appeal can be considered for the purpose of determining whether a further hearing is warranted; but in the absence of substantial proof tending to show the existence of a valid discovery on the claims there is no basis for further evidentiary proceedings.

United States v. Jimmie (Juanita) P. Laing, 3 IBLA 108 (Aug. 19, 1971)

The Board of Land Appeals has authority to reverse the fact findings of a hearing examiner even when not clearly erroneous. However, where the resolution of a case depends primarily upon his findings of credibility, which in turn are based upon his reaction to the demeanor of the witnesses, and such findings are supported by substantial evidence, they will not be disturbed by the Board.

State Director for Utah v. Edgar Dunham, 3 IBLA 155 (Aug. 31, 1971), 78 I.D. 272

An appellant was not denied a fair hearing when she did not receive a copy of an exhibit which she requested, when it was shown that she had copies of numerous items from the exhibit in her possession and sufficient opportunity to examine the other items.

An appellant was not denied a fair hearing when she did not receive a copy of the

RULES OF PRACTICE--Continued

EVIDENCE--Continued

exhibit she requested, when it was shown that a copy of such exhibit was not necessary to the preparation of her case.

Mrs. R. W. Hooper, 3 IBLA 330 (Oct. 20, 1971)

In a mining contest, the Government may use an expert witness such as a qualified mining engineer, to establish its case and testify concerning the prudent man test of discovery.

United States v. Howard S. McKenzie, 4 IBLA 97 (Nov. 19, 1971)

GOVERNMENT CONTESTS

A mining claim is properly declared invalid and patent application therefor is properly rejected where the Government establishes a prima facie case of lack of discovery, and the contestee presents no direct or rebuttal evidence.

United States v. Maurice E. Jones, 2 IBLA 237 (Apr. 30, 1971)

The regulations which provide that a contestee must file his answer to a contest complaint within 30 days of service, failing which the allegations of the complaint will be taken as admitted, and which require the manager to decide the case without a hearing are mandatory, and the Secretary is without authority to waive the rules to permit the late filing of an answer.

United States v. Nelson E. Divine et al., 2 IBLA 258 (May 10, 1971)

Under the Department's regulations governing government contests against mining claims, where an answer to a complaint is filed even one day late, the allegations of the complaint will be taken as admitted by the contestee and the case will be decided without a hearing by the land office manager.

United States v. Ray L. Pruett & Freida C. Pruett, 3 IBLA 23 (July 15, 1971)

In a government contest of the validity of certain mining claims where the only two charges in the complaint, alleging the nonmineral character of the land and the insufficient quantity of mineral, are negated by stipulation at a prehearing conference, and no new charges are incorporated by amendment and no new issues are stipulated, it is error for the hearing examiner to proceed with and decide the contest on the unilateral determination, announced at the hearing over contestee's objection, that the issue is whether the material is a common variety under the act of July 23, 1955.

The complaint which initiates a contest action must clearly and concisely state the facts constituting the grounds of the contest, and may be amended only after the other parties have been given due notice and afforded an opportunity to object. The complaint sets the standard of relevance which governs the

RULES OF PRACTICE--Continued

GOVERNMENT CONTESTS--Continued

proceedings at the hearing, and no issue unrelated to the complaint may be interjected without the implied or expressed acquiescence of the contestee.

Where issues not relating to the contest complaint are raised for the first time in a hearing, the contestee's failure to object or to request a continuance may constitute a waiver of the defective notice, but where objection is made and a continuance is requested to afford contestee an opportunity to prepare his defense, it is error to refuse the continuance and proceed with the hearing on the new issues.

A decision holding mining claims to be null and void will be vacated where the contest did not proceed upon any grounds stated in the complaint or upon any issue to which the contestee had expressly or impliedly consented, as will a ruling that an associated mill site is null and void because of the invalidity of the claims, and the contest will be dismissed without prejudice.

United States v. Harold Ladd Pierce, 3 IBLA 29 (July 19, 1971)

Where a Government contest complaint charges a lack of discovery and a contestee responds within the time required for filing an answer but the response fails to deny the allegations contained in the complaint, the allegations will be taken as admitted and the mining claims will be declared null and void.

United States v. Irvin Nielsen et al., 3 IBLA 53 (July 30, 1971)

Where a Government contest complaint against a mill site claim contains charges which, if proved, would render the claim invalid, and the contestees fail to file a timely answer to the complaint, the allegations of the complaint will be taken as admitted by the contestees and the claim is properly declared null and void by the land office manager under the Department's regulations governing such contests, which allow no exception for appellant's alleged reasons of illness and misplacement of contest complaint.

United States v. Alfred W. Storer and Cecile C. Storer, 3 IBLA 151 (Aug. 30, 1971)

In a mining contest when the Government has established a prima facie case that there has not been a discovery of a valuable mineral deposit within a mining claim, the claimant then has the burden of proof to show with a preponderance of the evidence that a discovery has been made.

United States v. Howard S. McKenzie, 4 IBLA 97 (Nov. 19, 1971)

HEARINGS

A motion for reconsideration, requesting a new hearing because of an ex parte communication contrary to the Board's rules, which occurred 18 months prior to the issuance of the principal

HEARINGS--Continued

decision and was not objected to until after that decision was rendered, is denied because appellant has failed to allege or show any error of law or fact in the principal decision, or that any actual prejudice to it resulted from the ex parte communication.

Appeal of the Brezina Construction Co., Inc., IBCA-757-1-69 (Feb. 17, 1971) 78 I.D. 44

It is proper to allow a third party to intervene in a proceeding where an interest of the intervenor may be affected by the outcome of the proceeding.

United States v. William A. McCall, Sr., The Dredge Corporation, Estate of Olaf H. Nelson, Deceased, Small Tract Applicants Association, Intervenor, 2 IBLA 64 (Mar. 22, 1971) 78 I.D. 71

Allegations by a County for which a replacement road was being built that the contracting officer had acted in an arbitrary manner and that its future course of action was to some extent dependent upon the result of the Board's review of the County's complaints, warrants Board examination of the complaints in detail even though it concludes on jurisdictional grounds that it has no authority to finally pass upon the claims asserted.

Appeal of Placer County, California, IBCA-777-5-69 (Apr. 8, 1971) 78 I.D. 113

The technical exclusionary rules of evidence applied in court proceedings need not be followed in administrative hearings; therefore, the fact that hearsay evidence, consisting of an assay report, was received by the Hearing Examiner in a Government contest, together with other evidence, is no reason for changing a decision which is sustainable even without such evidence.

United States v. A. P. Jones, 2 IBLA 140 (Apr. 8, 1971)

Evidence tendered on appeal in a mining contest case may not be considered except for the limited purpose of deciding whether a further hearing is warranted, since the record made at the hearing must be the sole basis for decision.

New evidence tendered on appeal is not sufficient to justify further evidentiary proceedings, although it might discredit testimony by government mineral examiners that two of their samples of a placer mining claim were taken to bedrock, where there is no tender of proof showing that the alleged greater mineral values at bedrock actually exist and the record does not show evidence of sufficient gold to warrant a prudent man to anticipate development of a valuable mine.

United States v. Wayne Winters d/b/a Piedras Del Sol Mining Company, 2 IBLA 329 (June 2, 1971) 78 I.D. 193

RULES OF PRACTICE--Continued

HEARINGS--Continued

In a government contest of the validity of certain mining claims where the only two charges in the complaint, alleging the non-mineral character of the land and the insufficient quantity of mineral, are negated by stipulation at a prehearing conference, and no new charges are incorporated by amendment and no new issues are stipulated, it is error for the hearing examiner to proceed with and decide the contest on the unilateral determination, announced at the hearing over contestee's objection, that the issue is whether the material is a common variety under the act of July 23, 1955.

The complaint which initiates a contest action must clearly and concisely state the facts constituting the grounds of the contest, and may be amended only after the other parties have been given due notice and afforded an opportunity to object. The complaint sets the standard of relevance which governs the proceedings at the hearing, and no issue unrelated to the complaint may be interjected without the implied or expressed acquiescence of the contestee.

Where issues not relating to the contest complaint are raised for the first time in a hearing, the contestee's failure to object or to request a continuance may constitute a waiver of the defective notice, but where objection is made and a continuance is requested to afford contestee an opportunity to prepare his defense, it is error to refuse the continuance and proceed with the hearing on the new issues.

A decision holding mining claims to be null and void will be vacated where the contest did not proceed upon any grounds stated in the complaint or upon any issue to which the contestee had expressly or impliedly consented, as will a ruling that an associated mill site is null and void because of the invalidity of the claims, and the contest will be dismissed without prejudice.

Where at a prehearing conference the parties agree to stipulations which make meaningless the charges set out in the complaint and there is a dispute as to whether a substitute issue was agreed upon, and where the contestant does not timely seek to amend the complaint, the failure of the hearing examiner to issue an order, as required by regulation, is error which necessitates that his decision be vacated.

United States v. Harold Ladd Pierce, 3 IBLA 29 (July 19, 1971)

An appellant was not denied a fair hearing when she did not receive a copy of an exhibit which she requested, when it was shown that she had copies of numerous items from the exhibit in her possession and sufficient opportunity to examine the other items.

An appellant was not denied a fair hearing when she did not receive a copy of the exhibit she requested, when it was shown that a copy of such exhibit was not necessary to the preparation of her case.

Mrs. R. W. Hooper, 3 IBLA 330 (Oct. 20, 1971)

RULES OF PRACTICE--Continued

HEARINGS--Continued

Where the Board concludes that a fuller presentation of facts is necessary for the adjudication of an application for a right-of-way for the disposal of decant water from a proposed mine tailing operation across land which is a component of the wild and scenic rivers system along the Rio Grande River, it will refer the matter to a hearing examiner to hold a hearing.

Molybdenum Corporation of America, 4 IBLA 53 (Nov. 3, 1971)

PROTESTS

A protest against a waiver of the late filing of a sodium preference right lease application is properly dismissed where the protestant has not persuasively demonstrated that the waiver under the provisions of 43 CFR 1821.2-2(g) would be in violation of any express exception therein.

William R. White et al., 1 IBLA 273 (Feb. 19, 1971) 78 I. D. 49

A protest against termination of an oil and gas lease is properly dismissed where there exists no reason under the Mineral Leasing Act to grant any further extension of the lease.

Margaret H. Paumier, 2 IBLA 151 (Apr. 9, 1971)

A protest against omission of a drawing entry card from a drawing to determine priority of oil and gas lease offers submitted in response to a published list of lands available for leasing by the simultaneous filing procedure, and against issuance of a lease to the offeror gaining priority therein, is properly dismissed where it is not shown that the omitted offer was correctly filed.

James W. Heyer, Appellant, Ray Newman, Edward W. Halsey, Harold L. Anderson, Appellees, 2 IBLA 318 (June 2, 1971)

A protest, charging failure of the Bureau of Land Management to reject an oil and gas lease offer because the land is not available, is properly rejected where the record shows that action on the lease offer is suspended pursuant to the terms set forth in Public Land Order 4582, as extended by PLO 4962 and PLO 5081.

George E. Utermohle, Jr., 3 IBLA 94 (Aug. 13, 1971)

Where an assignee of the preference right of a railroad company to an oil and gas lease under the Act of May 21, 1930, is determined to be qualified to receive such a lease for the oil and gas deposits underlying the railroad right-of-way granted pursuant to the Act of July 2, 1864, it is proper to dismiss a protest against issuance of such lease submitted by a successor to the original patentee of the subdivision of land traversed by the antecedent right-of-way.

George W. Zarak et al., Cardinal Petroleum Company, 4 IBLA 82 (Nov. 10, 1971)

RULES OF PRACTICE--Continued

PROTESTS--Continued

Where land riparian to the Snake River has been classified for disposal to a county for recreational purposes under the Recreation and Public Purposes Act, the protest of an adjoining land owner asserting a belief he may own the land, and objecting that he will be deprived of use of the land and that there will be a possible adverse future effect on his privately owned lands when the county acquires the tract, is properly dismissed where there is no showing he has any legal claim to the land which must be recognized by the federal government.

Joseph Burden, 4 IBLA 197 (Dec. 30, 1971)

SCHOOL LANDS

GRANTS OF LANDS

Until school sections which either "shall be granted" or "are hereby granted" to states from lands on Indian reservations have been surveyed, title does not pass from the United States to the states. Such school sections, while unsurveyed, remain subject to the Indians' historic right of occupancy until that occupancy is extinguished by the United States. If that right is never extinguished, it must still exist. So the United States continues to hold title to such sections in trust for the Indians, and the Indians continue to enjoy their aboriginal right of occupancy in those sections under that trust.

Ownership of Unsurveyed School Lands Within the Flathead Indian Reservation, M-36827 (July 2, 1971)

INDEMNITY SELECTIONS

Where a State has received title to a school indemnity selection, the base land for which the indemnity is taken remains in federal ownership and where, after the State has received such indemnity land, it issues an instrument of conveyance for the base land to private party A, who conveys it to B, who conveys it to the United States as base for a forest lieu selection, which is satisfied and thereafter the United States issues an indemnity clear list to the State for the school land in place to validate the State's purported conveyance to A, the title to the school land in place inures to the United States under the doctrine of after-acquired title.

Roger L. Morehart, 4 IBLA 1 (Oct. 26, 1971) 78 I.D. 307

SCRIP

(See also Soldiers' Additional Homesteads)

GENERALLY

An application filed pursuant to the Act of August 31, 1964, by which applicant elects to receive cash instead of land in satisfaction of a forest lieu selection right, is properly rejected as to 40 acres, which had been canceled from a lieu selection patent by a court decree, based upon the court's finding that the selector had filed false and fraudulent affidavits in procuring the patent, because the fraud was the fault of the selector and for that reason the 40 acres

SCRIP--Continued

GENERALLY--Continued

do not come within the savings clause of the proviso to the Act of March 3, 1905, which repealed the forest lieu selection provisions of the Act of June 4, 1897, as amended, and which provides that if for any reason not the fault of the party making the same any pending selection is held invalid, another selection for a like quantity of land may be made in lieu thereof.

Cash payment should not be made to an applicant under the Act of August 31, 1964, for 3.59 acres of a forest lieu selection right, where the Bureau of Land Management held that the selector used 280 acres when he selected 276.41 acres which had been patented and that the 3.59-acre difference was forfeited due to the lieu selection right being in the nature of a land exchange in which patents are usually issued in public land survey units of 40 acres.

C. W. Clarke, by Preston Nutter Corporation, his Attorney in Fact, 4 IBLA 163 (Dec. 23, 1971)

PAYMENT IN SATISFACTION

An application filed pursuant to the Act of August 31, 1964, by which applicant elects to receive cash instead of land in satisfaction of a forest lieu selection right, is properly rejected as to 40 acres, which had been canceled from a lieu selection patent by a court decree, based upon the court's finding that the selector had filed false and fraudulent affidavits in procuring the patent, because the fraud was the fault of the selector and for that reason the 40 acres do not come within the savings clause of the proviso to the Act of March 3, 1905, which repealed the forest lieu selection provisions of the Act of June 4, 1897, as amended, and which provides that if for any reason not the fault of the party making the same any pending selection is held invalid, another selection for a like quantity of land may be made in lieu thereof.

Cash payment should not be made to an applicant under the Act of August 31, 1964, for 3.59 acres of a forest lieu selection right, where the Bureau of Land Management held that the selector used 280 acres when he selected 276.41 acres which had been patented and that the 3.59-acre difference was forfeited due to the lieu selection right being in the nature of a land exchange in which patents are usually issued in public land survey units of 40 acres.

C. W. Clarke, by Preston Nutter Corporation, his Attorney in Fact, 4 IBLA 163 (Dec. 23, 1971)

SPECIAL TYPES OF SCRIP

An application filed pursuant to the Act of August 31, 1964, by which applicant elects to receive cash instead of land in satisfaction of a forest lieu selection right, is properly rejected as to 40 acres, which had been canceled from a lieu selection patent by a court decree, based upon the

SCRIP--Continued

SPECIAL TYPES OF SCRIP--Continued

court's finding that the selector had filed false and fraudulent affidavits in procuring the patent, because the fraud was the fault of the selector and for that reason the 40 acres do not come within the savings clause of the proviso to the Act of March 3, 1905, which repealed the forest lieu selection provisions of the Act of June 4, 1897, as amended, and which provides that if for any reason not the fault of the party making the same any pending selection is held invalid, another selection for a like quantity of land may be made in lieu thereof.

Cash payment should not be made to an applicant under the Act of August 31, 1964, for 3.59 acres of a forest lieu selection right, where the Bureau of Land Management held that the selector used 280 acres when he selected 276.41 acres which had been patented and that the 3.59-acre difference was forfeited due to the lieu selection right being in the nature of a land exchange in which patents are usually issued in public land survey units of 40 acres.

C. W. Clarke, by Preston Nutter Corporation, his Attorney in Fact, 4 IBLA 163 (Dec. 23, 1971)

SECRETARY OF THE INTERIOR

The Secretary of the Interior, in the exercise of his discretionary authority respecting issuance of oil and gas leases, may require acceptance of special stipulations as a condition precedent to issuance of such a lease, where such stipulations are designed to protect the soil and surface resources and do not unreasonably interfere with the lessee's rights of enjoyment.

Quantex Corporation et al., 4 IBLA 31 (Oct. 28, 1971) 78 I.D. 317

Where the notice of competitive bidding for sulphur leases reserves to the Government the right to reject any and all bids, the high bid may be rejected if the Secretary (or his delegate) determines it to be in the public interest to do so.

Humble Oil & Refining Company, 4 IBLA 72 (Nov. 8, 1971)

SMALL TRACT ACT

APPRAISALS

Where the Secretary of Interior has remanded small tract offers to a hearing examiner for a recommended decision in order to ascertain the current value of the federal interest in the tracts, and all parties involved have acquiesced in the recommended decision, the cases will be remanded to the Bureau of Land Management for disposition as outlined in the recommended decision.

Elton E. Gittel and Gerald A. Gittel et al., 2 IBLA 243 (May 4, 1971)

SODIUM LEASES AND PERMITS

GENERALLY

Sodium zeolites are sodium aluminum silicate compounds and as such are substances of sodium enumerated in section 23 of the Mineral Leasing Act.

Substances of sodium enumerated in section 23 of the Mineral Leasing Act, whether simple, double, or complex compounds of sodium, are subject to disposition only under the provisions of the Mineral Leasing Act, and, consequently, are not subject to location and acquisition under the mining laws.

Disposition of Sodium Zeolites Under the Mineral Leasing Act of 1920, M-36823 (May 7, 1971)

Issuance of sodium preference right leases to applicants who have satisfactorily shown that they have discovered valuable deposits of sodium within the lands covered by their applications and that those lands are chiefly valuable for those deposits held legally proper.

Wolf Joint Venture et al., A-30978 (Supp.) (June 30, 1971)

LEASES

A protest against a waiver of the late filing of a sodium preference right lease application is properly dismissed where the protestant has not persuasively demonstrated that the waiver under the provisions of 43 CFR 1821.2-2(g) would be in violation of any express exception therein.

William R. White et al., 1 IBLA 273 (Feb. 19, 1971) 78 I. D. 49

PREFERENCE RIGHT LEASES

Issuance of sodium preference right leases to applicants who have satisfactorily shown that they have discovered valuable deposits of sodium within the lands covered by their applications and that those lands are chiefly valuable for those deposits held legally proper.

Wolf Joint Venture et al., A-30978 (Supp.) (June 30, 1971)

RENTALS

Where a sodium lessee files a relinquishment of the lease after accrual but before payment of the rental for that calendar year, the Secretary is empowered to determine whether the lessee demonstrated reasonable diligence so as to obtain the benefit of proration of rent on a monthly basis pursuant to the Act of November 28, 1943; but the act does not confer authority to relieve the lessee of liability for rental accrued for those months prior to the filing of the relinquishment.

Southwest Salt Company, 2 IBLA 81 (Mar. 24, 1971) 78 I. D. 82

SOLDIERS' ADDITIONAL HOMESTEADS

GENERALLY

The grant under the soldiers' additional homestead provision of 43 U.S.C. § 274 (1964) to soldiers who, under the homestead laws, "entered" a quantity of land less than 160 acres does not operate to create any rights under that section where the soldier, under the basic homestead laws, had made a homestead entry for 160 acres, even though such entry was subsequently canceled, and also made a later entry for 40 acres at a time when no law authorized the making of a "second" homestead entry.

The Department will not return papers filed in support of a claim of a soldiers' additional homestead right where the claim is found to be invalid and the release of such documents might result in injury to innocent persons.

E. L. Cord, 3 IBLA 11 (July 7, 1971)

STATE LAWS

Under the Act of August 8, 1968, 82 Stat. 663, which allows resale to "former owners," both Indian and non-Indian, of lands located on the Pine Ridge Indian Reservation that were taken by the United States in 1942 for use as an aerial gunnery range but have now been declared excess to the needs of the Department of the Air Force, it was contemplated that only natural persons would qualify under the act's definition of "former owners." A county of South Dakota is not a "former owner" within the meaning of that act. In addition, South Dakota's own statutes contain no authorization for boards of county commissioners to purchase land, except to condemn private property for public purposes.

Application of Shannon County, South Dakota, To Purchase Lands Within The Pine Ridge Aerial Gunnery Range, Pursuant to the Act of August 8, 1968, 82 Stat. 663, M-36817 (Jan. 12, 1971)

The modification of the Federal Indian liquor laws, permitting the introduction, possession and sale of intoxicating beverages on the reservation with tribal consent (Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. section 1161 (1964)) does not make Montana liquor laws applicable to the Chippewa Cree Tribe or tribal members on the Rocky Boy's Reservation. Rather, this act requires the state liquor laws to be used as the standard of measurement to define lawful and unlawful activity on the reservation. Actions not in conformity with the provisions of applicable state law would subject a tribal member to prosecution only in the Federal courts, not in state courts. Non-Indians would be subject to prosecution in the Federal and state courts, assuming a double jeopardy question is not presented.

A subordinate tribal entity or tribal member licensed by the Chippewa Cree Tribe to operate a liquor establishment on the Rocky Boy's Reservation does not have to obtain a state liquor license.

Applicability of the Liquor Laws of the State of Montana on the Rocky Boy's Reservation, M-36815 (Feb. 3, 1971) 78 I. D. 39

STATE LAW--Continued

Utah game laws apply to non-Indians who hunt, even with the tribe's permission, on the Uintah and Ouray Indian Reservation. Thus, non-Indians cannot hunt on the reservation without procuring a state license, even though they may be licensed by the tribe to do so.

Criminal Jurisdiction of Utah Over Non-Indians Hunting on the Uintah and Ouray Reservation in Violation of State Law, M-36813 (Mar. 29, 1971) 78 I.D. 101

The financial responsibility law of the State of Washington applies to Indians involved in an automobile accident on a private road within the Yakima Indian Reservation. The state, in requiring the Indians to post bond under the authority of this law, is not assuming any jurisdiction over Indians on reservation lands greater than that permitted under RCW 37.12.010 or under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. sec. 1162 and 28 U.S.C. sec. 1360 (1964)).

Applicability of the Financial Responsibility Law of Washington to Indians on the Yakima Reservation, M-36829 (July 20, 1971)

STATE SELECTIONS
(See also School Lands)

Where a State has received title to a school indemnity selection, the base land for which the indemnity is taken remains in federal ownership and where, after the State has received such indemnity land, it issues an instrument of conveyance for the base land to private party A, who conveys it to B, who conveys it to the United States as base for a forest lieu selection, which is satisfied and thereafter the United States issues an indemnity clear list to the State for the school land in place to validate the State's purported conveyance to A, the title to the school land in place inures to the United States under the doctrine of after-acquired title.

Roger L. Morehart, 4 IBLA 1 (Oct. 26, 1971) 78 I.D. 307

STATUTES

The Secretary of Agriculture is not authorized or required to conduct meat inspection programs on Indian reservations under the provisions of the Wholesome Meat Act of 1967, 81 Stat. 584, 21 U.S.C. sections 601-691 (Supp. V. 1965-1969).

States which have assumed the requisite jurisdiction over Indian country under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. section 1162 and 28 U.S.C. section 1360) or under the Civil Rights Act of 1968 (Act of April 11, 1968, 82 Stat. 77-81, 25 U.S.C. sections 1321-1322 (Supp. V., 1965-1969)) are required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations if the enforcement does not involve the regulation of property

STATUTES--Continued

held in trust by the United States for the benefit of the Indians. States which have not assumed the aforementioned jurisdiction over Indian country are not authorized or required by the Wholesome Meat Act of 1967 to enforce their meat inspection laws on Indian reservations unless the Secretary of the Interior were to enact regulations authorizing such enforcement under the authority granted him by the Act of February 15, 1929, 45 Stat. 1185, as amended, 25 U.S.C. section 231.

Applicability of the Wholesome Meat Act of 1967 on Indian Reservations, M-36811 (Feb. 1, 1971) 78 I.D. 18

The Winnebago Tribe has the power through its inherent right to govern itself and implied in its Constitution to create a tribal court to hear cases involving Indians who violate the tribal hunting and fishing laws. Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. sec. 1162 and 28 U.S.C. sec. 1360) does not derogate from this power in regard to hunting and fishing.

Power of the Winnebago Tribe to Create a Tribal Court to Hear Cases Involving Indians Who Violate Tribal Hunting and Fishing Laws, M-36821 (Mar. 19, 1971)

The financial responsibility law of the State of Washington applies to Indians involved in an automobile accident on a private road within the Yakima Indian Reservation. The state, in requiring the Indians to post bond under the authority of this law, is not assuming any jurisdiction over Indians on reservation lands greater than that permitted under RCW 37.12.010 or under Public Law 280 (Act of August 15, 1953, 67 Stat. 588, as amended, 18 U.S.C. sec. 1162 and 28 U.S.C. sec. 1360 (1964)).

Applicability of the Financial Responsibility Law of Washington to Indians on the Yakima Reservation, M-36829 (July 20, 1971)

STATUTORY CONSTRUCTION

GENERALLY

Under the Act of August 8, 1968, 82 Stat. 663, which allows resale to "former owners," both Indian and non-Indian, of lands located on the Pine Ridge Indian Reservation that were taken by the United States in 1942 for use as an aerial gunnery range but have now been declared excess to the needs of the Department of the Air Force, it was contemplated that only natural persons would qualify under the act's definition of "former owners." A county of South Dakota is not a "former owner" within the meaning of that act. In addition, South Dakota's own statutes contain no authorization for boards of county commissioners to purchase land, except to condemn private property for public purposes.

Application of Shannon County, South Dakota, To Purchase Lands Within The Pine Ridge Aerial Gunnery Range, Pursuant to the Act of August 8, 1968, 82 Stat. 663, M-36817 (Jan. 12, 1971)

STATUTORY CONSTRUCTION--Continued

GENERALLY--Continued

Under section 21 of the Mineral Leasing Act of 1920, as amended, a person, association, or corporation may take and hold directly only one oil shale lease, which shall not exceed 5,120 acres. If that lease should expire or terminate for any reason, or be transferred, the lessee would not, on account of the issuance of the prior lease, be barred from acquiring another oil shale lease.

Sections 21 and 27(e)(1) of the Mineral Leasing Act of 1920, as amended, must be read together, and, when so construed, they permit a person, association, or corporation to take, hold, own, or control indirect interests in oil shale leases as a member of associations or as a stockholder in corporations, each holding an oil shale lease, if those interests, together with acreage directly held, owned, or controlled under an oil shale lease, do not exceed in the aggregate 5,120 acres.

Under the excepting clause of section 27(e)(1) of the Mineral Leasing Act of 1920, as amended, where a person is the beneficial owner of 10 percent or less of the stock or other instruments of ownership or control of an association or corporation holding an oil shale lease, that indirect interest would not be chargeable against his aggregate allowable oil shale lease acreage of 5,120 acres.

Limitations on Oil Shale Holdings, M-36843 (Nov. 12, 1971)

It is an elementary rule of statutory construction that effect must be given, if possible, to every word, clause and sentence of a statute.

Where contemporaneous and practical interpretation of a statute has stood unchallenged for some 26 years, it will be regarded as of great importance in arriving at the proper construction of a statute.

Where a statute recites that "[l]ands . . . purchased under . . . this Act shall be open to mineral locations . . . .", the statute contains no purchase authority, but another section of the statute refers to laws under which such purchases have been made, the phrase quoted will be construed as meaning "[l]ands . . . purchased under . . . the laws set forth in this Act. . . ."

Ernest Smith, Ruth Smith, 4 IBLA 192 (Dec. 27, 1971) 78 I.D. 368

ADMINISTRATIVE CONSTRUCTION

It is an elementary rule of statutory construction that effect must be given, if possible, to every word, clause and sentence of a statute.

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Where a statute recites that "[l]ands . . . purchased under . . . this Act shall be open

STATUTORY CONSTRUCTION--Continued

ADMINISTRATIVE CONSTRUCTION--Continued

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Ernest Smith, Ruth Smith, 4 IBLA 192 (Dec. 27, 1971) 78 I.D. 368

LEGISLATIVE HISTORY

Under the Act of August 8, 1968, 82 Stat. 663, which allows resale to "former owners," both Indian and non-Indian, of lands located on the Pine Ridge Indian Reservation that were taken by the United States in 1942 for use as an aerial gunnery range but have now been declared excess to the needs of the Department of the Air Force, it was contemplated that only natural persons would qualify under the act's definition of "former owners." A county of South Dakota is not a "former owner" within the meaning of that act. In addition, South Dakota's own statutes contain no authorization for boards of county commissioners to purchase land, except to condemn private property for public purposes.

Application of Shannon County, South Dakota, To Purchase Lands Within The Pine Ridge Aerial Gunnery Range, Pursuant to the Act of August 8, 1968, 82 Stat. 663, M-36817 (Jan. 12, 1971)

The prohibition against contracts involving the employment of convict labor as contained in Executive Order 325a does not apply to those cooperative agreements entered into by the Bureau of Land Management and the several States which provide for emergency manpower assistance for the suppression of fires, even though, the States may rely in part upon trained convict crews for such emergency manpower reserves.

Use of State Convicts in BLM Fire-Suppression Work, M-36832 (Aug. 13, 1971) 78 I.D. 269

An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 act for that purpose.

Masonic Homes of California, 4 IBLA 23 (Oct. 27, 1971) 78 I.D.312

SURFACE RESOURCES ACT

GENERALLY

In a proceeding under sec. 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the surface resources of a mining claim

SURFACE RESOURCES--Continued

GENERALLY--Continued

prior to patent, the Government has no obligation to prove that the claim contains either surface resources and/or necessary access routes, but only to present a prima facie case that a discovery did not exist on the claim as of July 23, 1955, or that one does not exist at the present time. When the Government makes such a prima facie case it will prevail unless the claimant overcomes the Government's case by a preponderance of the evidence.

In a proceeding under sec. 5 of the Surface Resources Act of July 23, 1955, to determine the rights of the Government and a mining claimant as to the surface resources of a mining claim prior to patent, the Government will prevail if it is shown that a discovery perhaps existed prior to the date of the act but it is determined there was not a discovery of a valuable mineral deposit as of the date of the act, and the Government will also prevail if it is shown that a discovery perhaps existed prior to, or as of, the date of the act but it is determined at the time of inquiry that no discovery exists because the evidence of mineralization will no longer justify the expenditure necessary to develop a mine.

United States v. A. P. Jones, 2 IBLA 140 (Apr. 8, 1971)

HEARINGS

Testimony by a Government mineral examiner that he examined a mining claim and the workings thereon but found no evidence of a valuable mineral deposit is sufficient to establish a prima facie case by the Government as to its right to use and manage the surface of the claim.

United States v. A. P. Jones, 2 IBLA 140 (Apr. 8, 1971)

VERIFIED STATEMENT

Where after a mineral claimant has filed a verified statement pursuant to section 5 of the Surface Resources Act, the mining claim is declared null and void in a separate contest proceeding, the right of the claimant to the surface resources is extinguished, and there is no necessity for a separate proceeding under section 5 of the act.

United States v. J. S. Devenny, 3 IBLA 185 (Sept. 3, 1971)

SURVEYS OF PUBLIC LANDS

GENERALLY

Surveys of the United States, after acceptance, are presumed to be correct, and will not be disturbed, except upon clear proof that they are fraudulent or grossly erroneous. Where a public land applicant challenges the validity of a dependent resurvey he must establish by clear and convincing evidence that the resurvey is not an accurate retracement and reestablishment of the lines of the original survey in order to sustain his position.

Nina R. B. Levinson and Clare R. Sigfrid, 1 IBLA 252 (Feb. 2, 1971) 78 I.D. 30

In surveying a boundary line created by a metes and bounds description in a private conveyance of land, calls to landmarks or monuments are pre-eminent, calls to boundaries are of secondary importance, calls of courses will prevail over calls of distances, and the recital of the quantity or area of land conveyed will be least influential.

The Coast Indian Community, 3 IBLA 285 (Oct. 5, 1971)

Reservoir right-of-way applications are properly rejected where the lands applied for are within public land surveyed meander lines of the Great Salt Lake and have been conveyed to the State of Utah by the United States in accordance with the Act of June 3, 1966, and they will not be suspended to await possible reversion of the land to the United States if certain contingencies prescribed by the act should transpire.

William J. Colman, 3 IBLA 322 (Oct. 8, 1971)

DEPENDENT RESURVEYS

In making a retracement or dependent resurvey, the corners established should be located if possible by considering all the relevant evidence and not simply one or two factors.

A protest against an accepted plat of a dependent resurvey is properly dismissed where the dependent resurvey is based on a detailed evaluation of the physical evidence of a disputed corner and of the corners of that and other surveys while the protestant relies upon one call from one feature, which the U.S. surveyors could not find, to establish the rest of the survey by courses and distances without reference to any other features described in the field notes or other recovered corners.

Orion L. Fenton, 1 IBLA 203 (Jan. 4, 1971)

In the performance of a dependent resurvey in order to find a boundary line described by metes and bounds, the grant boundary method of distributing any error along the entire length of the line cannot be utilized where the apportionment depends on locating and fixing the terminus of the line by accepting one record distance call and allowing that distance to control the alteration of all of the other courses and distances recited in the record description of the boundary.

The Coast Indian Community, 3 IBLA 285 (Oct. 5, 1971)

TIDELANDS

Tidelands are not subject to leasing for oil and gas under the Mineral Leasing Act.

Sarah Ann Christie, 3 IBLA 7 (July 6, 1971)

TIMBER SALES AND DISPOSALS

A request for extension of timber sale contracts, based on a general repression in the national economy, may be granted where it appears that such action will benefit the public interest.

Oregon Alder-Maple Company, 1 IBLA 241 (Jan. 26, 1971)

A request for extension of a timber ssle contract is properly denied where the purchaser has not shown that its delay in cutting and removal was due to causes beyond its control.

Nordic Veneers, Inc., 3 IBLA 86, (Aug. 2, 1971)

A request for extension of a timber sale contract is properly denied where the purchaser has not shown that its delay in cutting and removal was due to causes beyond its control.

Clark Canyon Lumber Company, 3 IBLA 247 (Sept. 13, 1971)

Where a Bureau of Land Management timber sale contract required the purchaser to rock a designated road under certain specifications, in the absence of a "change" clause in the contract, Bureau personnel could not unilaterally require the purchaser to rock another road instead; nevertheless, the parties could agree to a modification of the original contract.

A timber sale contract will be considered as modified by the Bureau of Land Management and the purchaser thereunder where the record produced at a hearing provides a reasonable basis for finding that the parties agreed to a substituted change in the road rocking obligations of the purchaser; however, the purchaser will not be found to be in default under the modified terms of the contract if the record fails to substantiate the Bureau's charge that the purchaser breached its obligations.

Parker Industries, Inc., 4 IBLA 117 (Nov. 30, 1971)

TITLE

REAL PROPERTY

For the purposes of the Federal-Aid Highway Act of 1958, 23 U.S.C. sec. 120 (Supp. V, 1969) those lands selected by the State of Alaska pursuant to the Alaska Statehood Act of 1958 (72 Stat. 339) remain public lands until such time as a final patent has been issued to the State.

Distribution of Funds for Federal Aid-Highways Based on Area of Lands in Federal Ownership in Alaska, M-36834 (Aug. 27, 1971)

TRESPASS

GENERALLY

A grazing trespass will not be deemed clearly willful where the licensee's conduct in committing the trespass is consistent with his view of the date on which the range had been opened to grazing, and

TRESPASS--Continued

GENERALLY--Continued

the evidence that he knew the correct date is not persuasive.

Lawrence F. Bradbury, 2 IBLA 116 (Apr. 5, 1971)

A grazing trespass will not be deemed clearly willful where two separate, almost simultaneous violations of short duration have occurred followed by an admittedly willful violation involving only one cow for one day.

State Director for Utah v. Edgar Dunham, 3 IBLA 155 (Aug. 31, 1971), 78 I.D. 272

Where s grazing licensee committed eleven grazing violations during the period 1956-62 and six violations during 1967 and 1968, the six violations, although not found to be clearly willful or grossly negligent, constitute repeated trespasses for which a reduction in grazing privileges may be imposed and a 10% reduction for one year is justified.

John Gribble, 4 IBLA 134 (Dec. 3, 1971)

Where an assertion is made that unauthorized uses of public lands are being made, such an assertion, even if true, cannot vest in an applicant any right not authorized by law.

Leroy Martin, 4 IBLA 160 (Dec. 17, 1971)

MEASURE OF DAMAGES

Where it has been determined that a grazing trespass on the Federal range, while not clearly willful or grossly negligent, is repeated, the regulation requires that the forage value shall be computed and assessed at $4 per animal unit month or twice the commercial rate if such amount is higher. When the commercial rate is $4, the assessment of damages at $8 per animal unit month for repeated trespasses will be affirmed.

Where a grazing licensee committed eleven grazing violations during the period 1956-62 and six violations during 1967 and 1968, the six violations, although not found to be clearly willful or grossly negligent, constitute repeated trespasses for which a reduction in grazing privileges may be imposed and a 10% reduction for one year is justified.

John Gribble, 4 IBLA 134 (Dec. 3, 1971)

UNITED STATES

The Twenty-Sixth Amendment to the Constitution, providing, inter alia, that "the United States" shall not deny or abridge the right of eighteen-year-olds to vote, applies to Indian tribes' elections called by the Secretary pursuant to the Indian Reorganization Act or other act, but, because of the fundamental right of a tribe to govern itself, the amendment does not apply to Indian tribes in purely tribal elections.

The Eighteen-Year-Old Vote Amendment as Applied to Indian Tribes, M-36840 (Nov. 9, 1971)78 I.D. 349

VOTING

The Twenty-Sixth Amendment to the Constitution, providing, inter alia, that "the United States" shall not deny or abridge the right of eighteen-year-olds to vote, applies to Indian tribes' elections called by the Secretary pursuant to the Indian Reorganization Act or other act, but, because of the fundamental right of a tribe to govern itself, the amendment does not apply to Indian tribes in purely tribal elections.

The Eighteen-Year-Old Vote Amendment as Applied to Indian Tribes, M-36840 (Nov. 9, 1971) 78 I.D. 349

WATER AND WATER RIGHTS

GENERALLY

It is proper to reject an application for a right-of-way for a pipeline to transport water from a spring on public land to private land for private use where the public land has high resource value to the development of which the water may be vital.

William A. Lester, Executor of the Estate of Fred W. Sprung, 2 IBLA 172 (Apr. 19, 1971)

WATER RESOURCES PLANNING AND RESEARCH

The ten-year prohibition in sec. 201 of the Colorado River Basin Project Act, 43 U.S.C. 1511, against reconnaissance studies of any plan for the importation of water into the Colorado River Basin represents an express Congressional limitation on the "mission" of the Department of the Interior as that term is used in sec. 200(a) of the Water Resources Research Act of 1964, 42 U.S.C. 1961(b)(a), and therefore precludes the Secretary from approving, during the moratorium period, financial assistance under the latter section for a research proposal having as a central feature the study of augmenting the water resources of the Colorado River Basin by regional water transfers from Canada.

Research Proposal on Regional Water Transfers From Canada into the Colorado River Basin, M-36830 (June 29, 1971)

WITHDRAWALS AND RESERVATIONS

GENERALLY

Where there has been no Governmental recognition of proprietary rights in lands occupied by Alaska natives, the United States may withdraw such lands from disposition under the public land laws, including the Alaska Native Allotment Act.

The strong Congressional policy of protecting the naval petroleum reserves compels the rejection of native allotment applications for lands within Naval Petroleum Reserve No. 4 in Alaska in the exercise of the Secretary of the Interior's discretion under the Alaska Native Allotment Act, regardless

WITHDRAWALS AND RESERVATIONS--Continued

GENERALLY--Continued

of whether asserted inchoate occupancy preference rights under that Act are deemed unaffected or precluded by the reserve and subsequent withdrawals.

Terza Hopson et al., 3 IBLA 134 (Aug. 20, 1971)

Public Land Order 4582, as amended, does not bar the reinstatement of a homestead entry where the record shows asserted valid settlement prior to December 14, 1968.

Juanita J. Anderson, 4 IBLA 170 (Dec. 23, 1971)

AUTHORITY TO MAKE

The authority to withdraw "public lands," granted by the Pickett Act, 43 U.S.C. §§ 141-142 (1964), permits the withdrawal of lands already in a national forest for power site purposes.

Donald E. Miller, 2 IBLA 309 (May 26, 1971)

EFFECT OF

Lands within Naval Petroleum Reserve No. 4 in Alaska withdrawn from entry by Public Land Order No. 82 were expressly precluded from being opened to entry by Public Land Order No. 2215, which revoked Public Land Order No. 82; therefore, the withdrawal by Public Land Order No. 82 remains in effect as to such lands and precludes the allowance of native allotment applications for such lands unless the lands applied for were otherwise excepted from the withdrawal or unless rights had attached.

Terza Hopson et al., 3 IBLA 134 (Aug. 20, 1971)

No rights are acquired under the Alaska Native Allotment Act, 48 U.S.C. §§ 357, 357a, 357b (1958) by a native who purportedly commenced his occupation of the land at a time when the land was withdrawn from all forms of appropriation and where after the withdrawal was revoked, the land was opened only for the filing of State selection applications.

Harold J. Naughton, 3 IBLA 237 (Sept. 13, 1971), 78 I.D. 300

An Executive Order which merely segregated lands until a determination could be made as to whether such lands, or part of them, ought to be set aside for Indian purposes is not sufficient to remove such lands from the jurisdiction of the General Land Office and its successor, the Bureau of Land Management.

Authority to Issue Trust Patents for the Benefit of Certain Groups of Mission Indians of California Pursuant to the Act of March 1, 1907, for Parcels of Land Within the "Mission Reserve", M-36756 (Supp.) (Nov. 18, 1971)

Public Land Order 4582, as amended, does not bar the reinstatement of a homestead entry where the record shows asserted valid settlement prior to December 14, 1968.

Juanita J. Anderson, 4 IBLA 170 (Dec. 23, 1971)

WITHDRAWALS AND RESERVATIONS--Continued

POWER SITES

Public lands which are withdrawn by a power site classification are not subject to appropriation under the desert land laws.

Leroy Martin, 4 IBLA 160 (Dec. 17, 1971)

RECLAMATION WITHDRAWALS

Land in a second form reclamation withdrawal remains open to mineral location.

M. G. Johnson, 2 IBLA 106 (Apr. 5, 1971) 78 I. D. 107

Land within a desert land entry included in an irrigation district does not become subject to a later reclamation withdrawal so long as the entry subsists.

C. Arden Gingery, Michiko Shiota (Gingery), 2 IBLA 351 (June 23, 1971) 78 I.D. 218

Land within a first form reclamation withdrawal is not subject to desert land entry; therefore, applications to enter the withdrawn land must be rejected, regardless of the applicants' objections to the withdrawal.

Juanice H. McCain et al., 4 IBLA 188 (Dec. 27, 1971)

REVOCATION AND RESTORATION

Where the Federal Power Commission dismissed a Federal Power Project application in 1931, and the lands have not been restored to entry in conformity with sec. 24 of the Federal Power Act, 16 U.S.C. § 818 (1964), the lands are not subject to appropriation or disposition under the public land laws.

Donald E. Miller, 2 IBLA 309 (May 26, 1971)

Lands within Naval Petroleum Reserve No. 4 in Alaska withdrawn from entry by Public Land Order No. 82 were expressly precluded from being opened to entry by Public Land Order No. 2215, which revoked Public Land Order No. 82; therefore, the withdrawal by Public Land Order No. 82 remains in effect as to such lands and precludes the allowance of native allotment applications for such lands unless the lands applied for were otherwise excepted from the withdrawal or unless rights had attached.

Terza Hopson et al., 3 IBLA 134 (Aug. 20, 1971)

WORDS AND PHRASES

"Calendar year or fraction thereof." Calendar year or fraction thereof as that term is employed by the act of Dec. 11, 1928, refers to a period beginning on Jan. 1 and ending on Dec. 31, of the same year, both dates inclusive.

Southwest Salt Company, 2 IBLA 81 (Mar. 24, 1971) 78 I. D. 82

WORDS AND PHRASES--Continued

"Entered." The grant under the soldiers' additional homestead provision of 43 U.S.C. § 274 (1964) to soldiers who, under the homestead laws, "entered" a quantity of land less than 160 acres does not operate to create any rights under that section where the soldier, under the basic homestead laws, had made a homestead entry for 160 acres, even though such entry was subsequently canceled, and also made a later entry for 40 acres at a time when no law authorized the making of a "second" homestead entry.

E. L. Cord, 3 IBLA 11 (July 7, 1971)

"Exploration" is the process of searching for a valuable mineral deposit. The finding of mineralization of sufficient value to encourage further exploration does not successfully conclude the exploratory process or constitute a discovery.

"Discovery" occurs upon the finding of a mineral deposit revealed to be of sufficient qualitative and quantitative value to warrant the expenditure of effort to develop a mine in the reasonable anticipation that a profitable mining operation will result.

"Development" refers to the physical work incident to the excavation of a mine for the extraction of the mineral values discovered. After discovery, certain exploratory activities incident to the actual production of the minerals are regarded as "development" rather than as "exploration". These would include the blocking out of the ore body, testing for engineering feasibility, determining the strike and dip of the vein beyond the extent of the qualifying knowledge, and related activities.

United States v. New Mexico Mines, Inc., 3 IBLA 101 (Aug. 18, 1971)

"Irrigation Works." For the purpose of determining whether entered but unpatented land can be disposed of pursuant to sec. 6 of the Smith Act of Aug. 11, 1916, the "irrigation works" referred to in that section are not those necessary on an individual entry to carry out irrigation but refer to facilities that serve the irrigation district in general, and "water of the district available for such land" means only that the entryman has a legally enforceable claim to available water even though access to it is barred by a Departmental regulation.

C. Arden Gingery, Michiko Shiota (Gingery), 2 IBLA 351 (June 23, 1971) 78 I. D. 218

"Public Lands." The term "public lands" often means such land as is subject to sale or disposition under the general public land laws, and not such as is reserved for any purpose. The term's meaning depends upon the context in which used.

WORDS AND PHRASES--Continued

The term "public lands" as used in the Pickett Act, 43 U.S.C. secs. 141-142 (1964), and in the Executive Order of Apr. 13, 1912, creating Powersite Reserve No. 258 includes reserved lands not otherwise appropriated.

Donald E. Miller, 2 IBLA 309 (May 26, 1971)

"Water of the District Available for Such Land"

For the purpose of determining whether entered but unpatented land can be disposed of pursuant to sec. 6 of the Smith Act of Aug. 11, 1916, the "irrigation works" referred to in that section are not those necessary on an individual entry to carry out irrigation but refer to facilities that serve the irrigation district in general, and "water of the district available for such land" means only that the entryman has a legally enforceable claim to available water even though access to it is barred by a Departmental regulation.

C. Arden Gingery, Michiko Shiota (Gingery), 2 IBLA 351 (June 23, 1971) 78 I. D. 218

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) (1971) does not interdict the use of a rubber stamp to affix a signature to a drawing entry card, provided that it is the applicant's intention that the stamp be his signature.

Mary I. Arata, 4 IBLA 201 (Dec. 30, 1971) 78 I.D. 397

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